Commonwealth of Massachusetts
The Appeals Court

Middlesex County

No. 2020-P-0451

COBBLE HILL CENTER LLC,

Plaintiff-Appellant,

– against –

SOMERVILLE REDEVELOPMENT AUTHORITY,

Defendant-Appellee.

ON APPEAL FROM FINAL ORDER ON CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS IN THE SUFFOLK SUPERIOR COURT, 1984CV01046

BRIEF FOR PLAINTIFF-APPELLANT

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I. STATEMENT OF THE ISSUES PRESENTED

1. Whether the trial court erred in declaring that M.G.L. c. 121B, 46(f) authorized the Somerville Redevelopment Authority (the "SRA") to take Cobble Hill Center, LLC's ("Cobble Hill's") property by eminent domain in the absence of authorization from elected officials through an approved urban renewal project or urban renewal plan because the SRA labeled the action a "demonstration."

II. STATEMENT OF THE CASE

This case involves the SRA's purported eminent domain taking (the "Putative Taking") of Cobble Hill's 3.99 acre property located at 90 Washington Street, Somerville, MA (the "Property"). R.A. Vol. VI, pp. 161-162.[1] The SRA recorded the Putative Taking on March 8, 2019. Id. On April 3, 2019, Cobble Hill filed a Complaint in Suffolk Superior Court seeking a declaration that the taking was invalid and seeking certiorari review of the Putative Taking.[2] R.A. Vol. I, pp. 10-15.

[1] Citations to the Record Appendix are set out as "R.A." followed by the volume number and page number.
[2] Cobble Hill is appealing only the Court's determination of the declaratory judgment count.

On June 5, 2019, the SRA filed a Motion for Judgment on the Pleadings requesting that the Court determine that the Putative Taking was valid and authorized by M.G.L. c. 121B, § 46(f) and Cobble Hill filed an opposition and cross-motion for judgment on the pleadings, requesting, *inter alia*, that the trial court determine that the Putative Taking was not authorized as a "demonstration." R.A. Vol. I, pp.8, 26, 46.

On November 15, 2019, the trial court allowed the SRA's Motion and denied Cobble Hill's cross-motion and entered judgment in the SRA's favor. R.A. Vol. I, pp 115-131.

Cobble Hill filed a timely Notice of Appeal. R.A. Vol. I, pp. 132-133.

III. STATEMENT OF THE FACTS

This case involves Cobble Hill's challenge to the validity of the Putative Taking of Cobble Hill's Property. R.A. Vol. I, pp.10-15. The Property is a 3.99 acre parcel located in Somerville, Massachusetts. R.A. Vol. I, p. 116. The Property is directly across from the new MBTA East Somerville Green Line station, which is scheduled to open in 2021. R.A. Vol. I, p. 118. The SRA has recognized that the Property is "highly visible in the neighborhood" and "well situated as a

major gateway in Somerville, with terrific vehicular access and visual prominence along a key corridor into the City." Id. The Property is unquestionably extremely valuable. The SRA awarded Cobble Hill $8,778,000 as *pro tanto* damages for the Property. R.A. Vol. VI, p. 162. Cobble Hill previously rejected an offer to sell the Property for $14,100,000. R.A. Vol. VI, p. 131. Cobble Hill believes that the Property's fair market value is significantly higher than either figure.

Cobble Hill and its affiliate developed the Property and an abutting property with a 12,555 square foot retail mall and a 224-unit residential apartment complex. R.A. Vol. I, p. 116. Cobble Hill obtained the necessary permits to allow it to demolish the retail mall and construct a six-story mixed-use development with 159 residential units. Id.; Vol. VI, pp. 113-115. However, because of litigation between Cobble Hill and one of its minority partners, it was unable to commence the development. R.A. Vol. I, p. 117. The litigation between the partners was concluded before the Putative Taking with a judgment in the Suffolk Superior Court entered in July, 2018 in favor of the majority partners. R.A. Vol. I, p. 117. The judgment was up-

held on appeal. Id.

At some point in time, the City of Somerville determined that it needed to replace its aging police station and identified the Property as the best site for a new public safety building. R.A. Vol. II, pp. 89-90; 125. However, the City ultimately decided not to take the Property for its own public purposes and instead relied on the SRA to acquire the Property.

The SRA adopted a "Demonstration Plan" whereby it would attempt to take the Property by eminent domain to be used in part by the City for its new public safety building. R.A. Vol. II, pp. 66-102. Because the Property contains excess land not needed for the public safety building, the Development Plan contemplates a future sale of the remaining land to a private buyer for a future redevelopment. R.A. Vol. II, p 90.

The "Demonstration Project" identifies three "Objectives":

A. "Eliminate Blight";

B. "Public Safety Complex"; and

C. "Transformative Development Opportunity."

R.A. Vol. II, pp. 88-90.

The "Demonstration Plan" does not identify a "demonstration" as one of the enumerated objectives

for the plan. Id.

Although the ultimate use of the Property beyond the public safety building (and the configuration of the public safety building and other use(s)) is not determined within the "Demonstration Plan" and left to be determined later; it is clear that the SRA contemplates the likelihood that the Property will be developed by a private party. The "Demonstration Plan" calls for the selection of a private developer as "Phase IV" of the project. R.A. Vol. II, pp. 96-98. Additionally, the majority of the uses identified as part of the "Transformative Development Opportunity" objective call for private development: "tax and job generating commercial development"; retail uses and housing (including market rate housing). R.A. Vol. II, p. 90. The "Demonstration Plan" identifies two (2) project elements: "the municipal public safety complex ***and the private mixed-use development.***" R.A. Vol. II, p. 99 (emphasis added).

Cobble Hill repeatedly objected to the proposed taking of the Property and communicated to the SRA and the City of Somerville its position that the SRA did not have authority to take the Property by eminent domain through a "Demonstration Plan" unconnected with

any urban renewal project. R.A. Vol. II, p. 20; Vol. VI, pp.8-9 and 73.

Notwithstanding Cobble Hill's objection, the SRA voted to take the Property by eminent domain in furtherance of the "Demonstration Project." R.A. Vol. VI, pp.158-159. The Putative Taking was recorded at the Middlesex County South Registry of Deeds on March 8, 2019. R.A. Vol. VI, pp. 161-166. No urban renewal plan connected with the taking has been initiated or approved. R.A. Vol. I, p. 115.

Cobble Hill filed this action on April 3, 2019, challenging the validity of the Putative Taking. R.A. Vol. I, p. 8. On November 15, 2019, the trial court allowed the SRA's motion for judgment on the pleadings and denied Cobble Hill's cross-motion for judgment on the pleadings and entered judgment in the SRA's favor. R.A. Vol. I, pp. 115-131. Cobble Hill filed a timely Notice of Appeal. R.A. Vol., pp. 132-133.

IV. SUMMARY OF ARGUMENT

A. Introduction

The taking of private property by eminent domain is among the highest powers of government, and legislation delegating that power must be interpreted strictly and meet constitutional requirements, includ-

ing a specific legislative delegation and findings of public necessity. The relevant legislation authorizing the SRA to exercise eminent domain powers expressly limits its finding of public necessity to actions taken in connection with an urban renewal plan. The SRA's attempt to take the Property by eminent domain without initiating an urban renewal plan was unauthorized. (Pages 16-18).

B. Standard of Review

The trial court's decision allowing judgment on the pleadings based on a question of law should be reviewed *de novo*. (Page 18).

C. The Trial Court Erred As A Matter of Law In Holding That The Putative Taking Was Authorized By M.G.L. c. 121B

a. The Legislature Has Not Delegated Eminent Domain Powers to Urban Renewal Agencies Outside of Urban Renewal Projects

Well-rooted constitutional principles establish that an agency may only exercise eminent domain powers where the legislature has specifically delegated those powers and made specific findings that such exercise is for a public necessity. In making those findings, the legislature expressly limited their applicability to apply only to "urban renewal projects" subject to an urban renewal plan. The Putative Taking was not

"relating to urban renewal projects" and was therefore unauthorized. (Pages 18-22)

b. Interpreting G.L. c. 121B, §46(f) to Permit an Eminent Domain Taking Outside of an Urban Renewal Project Would Allow an Unconstitutional Diversion of Public Powers and Property for Private Benefit

Eminent domain takings of land that will be utilized in part by private developers must be made pursuant to legislation that includes specific standards and principles to protect the public interest and safeguard against the diversion of public powers and assets to the benefit of private interests. The SRA is attempting to use eminent domain powers to take property to be conveyed to a private developer for its use and operation. M.G.L. c. 121B is unconstitutional if it allows the SRA to take private property by eminent domain to give to private developers without sufficient legislative standards and principles in place. The only such standards and principles in M.G.L. c. 121B are established as part of the urban renewal plan approval process. Therefore, G.L. c. 121B is only constitutional if interpreted to grant eminent domain taking power in association with an urban renewal plan. The Putative Taking was not made in association with an urban renewal project, is not governed by con-

stitutionally-required standards and principles and was unauthorized. (Pages 22-25).

c. The Urban Renewal Statutory Scheme Permits Eminent Domain Takings Only in Conjunction with an Urban Renewal Plan

M.G.L. c. 121B establishes a scheme under which urban renewal agencies like the SRA must operate. The statutory scheme is carefully protective of the public interest and of private property owners. The SRA's power to take properties by eminent domain is limited to the purposes within the statutory scheme set out in M.G.L. c. 121B, §45, which section expressly limits its ultimate finding to allow action pursuant to urban renewal plans. The statutory scheme sets out two specific ways in which an urban renewal agency may take property by eminent domain, both of which pertain to urban renewal projects. The SRA may take property by eminent domain pursuant to an urban renewal plan after it has been approved by the City and by the State Department of Housing and Community Development. Otherwise, it may take property in contemplation of an urban renewal plan that is underway, so long as it obtains permission, again from the City and the State Department of Housing and Community Development. Any other taking by eminent domain associated with an ur-

ban renewal plan is expressly prohibited by the statute. The legislature clearly intended to impose high hurdles before an urban renewal agency may take private property by eminent domain, which includes authorization from electorally responsible representatives. It would be absurd to interpret the statute to allow the SRA to forego any of those protective processes and any accountability to the public simply by labeling a project a "demonstration." (Pages 26-44).

d. The Putative Taking Did Not Demonstrate Methods and Techniques for the Prevention and Elimination of Slums and Urban Blight

The SRA overreached well beyond its authority by attempting to label the seizure of a 4-acre property, worth more than $8,000,000 for redevelopment, as a mere "demonstration." The project does not serve to "demonstrate" anything and vastly exceeds the scope of other "demonstrations" that have been reviewed by the courts. The SRA's action is essentially an urban renewal project by another name, which could only be exercised as part of an urban renewal plan. The SRA cannot avoid the processes required for an urban renewal plan just by calling its action a "demonstration." (Pages 44-49).

V. ARGUMENT

A. Introduction

> [N]o part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people.
>
> Massachusetts Declaration of Rights, Article 10.

"The taking of land from a private owner against his will for a public use under eminent domain is an exercise of one of the highest powers of government." Devine v. Town of Nantucket, 449 Mass. 499 (2007); Lajoie v. City of Lowell, 214 Mass. 8 (1913). Therefore, eminent domain statutes are strictly interpreted to protect citizens from encroachment on their property rights. Id. Findings of public purpose made by the legislature are of key importance when interpreting such statutes. Tate v. City of Malden, 334 Mass. 507, 508 (1956).

Both the United States and Massachusetts State constitutions contain express limitations on the government's power to seize property by eminent domain. United States Const., Amendment V; Massachusetts Declaration of Rights, Article 10. Included within these protections are the requirements that no such taking can occur without the consent of the legislature and

that such takings can only be made for public purposes and only with the payment of just compensation. Id.

In deference to these principles, where the legislature has delegated eminent domain powers to local governmental units, it has in all cases prescribed a process requiring that such power only be exercised after substantial deliberation and accountability to the public. See G.L. c. 40, §14; c. 43, §30 (Eminent domain can only be exercised by a city or town after a 2/3 vote by the City Council or town members authorizing the appropriation of compensation).

In keeping with these constitutional and prudential requirements, the legislature has established in G.L. c. 121B a robust process that an urban renewal agency must undertake before invoking its eminent domain powers, which in all cases must be related to an urban renewal plan approved by elected representatives and subject to public review and comment. Specifically, the legislature's express legislative declaration of necessity, supplying the constitutional basis for the SRA's eminent domain taking power, is limited to urban renewal projects occurring pursuant to an approved urban renewal plan.

The SRA is an independent authority, controlled by an unelected board, with no direct accountability to the people and can only exercise eminent domain powers as authorized by the legislature, abiding by the required limitations and protections. This case involves the SRA's attempt to subvert the protections wisely set out by the legislature through its own semantic maneuvering.

B. Standard of Review

The trial court's granting of judgment on the pleadings, and its statutory interpretation of M.G.L. c. 121B were both questions of law, which this Court reviews *de novo*. Wheatley v. Massachusetts Insurers Insolvency Fund, 456 Mass. 594, 600-601 (2010).

C. The Trial Court Erred As A Matter of Law In Holding That The Putative Taking Was Authorized By M.G.L. c. 121B

a. The Legislature Has Not Delegated Eminent Domain Powers to Urban Renewal Agencies Outside of Urban Renewal Projects

As relevant to urban renewal agencies' power of eminent domain, the legislature expressly declared: "[t]he necessity in the public interest for the provisions of this chapter ***relating to urban renewal projects*** is hereby declared as a matter of legislative determination" M.G.L. c. 121B, §45(emphasis added).

"Urban renewal projects" are defined as "a project to be undertaken in accordance with an urban renewal plan." M.G.L. c. 121B, §1.

The SRA purported to take the Property in its capacity as an "urban renewal agency" under M.G.L. c. 121B[3]. Although the powers of an urban renewal agency include the power of eminent domain (M.G.L. c. 121B, §§ 11(d)); such power is not unlimited. The United States and Massachusetts Constitutions prohibit the taking of land except when necessary for public purposes. United States Constitution, Amendment V; Massachusetts Declaration of Rights, Article 10; Kelo v. City of New London, Conn., 545 U.S. 469 (2005); Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Board of Lawrence, 403 Mass. 531 (1988). The question of "necessity" is one for legislative determination. Mugar v. Massachusetts Bay Transp. Authority, 28 Mass. App. Ct. 443, 446 (1990).

The SRA has no inherent eminent domain power and its taking powers are limited to those expressly authorized by the legislature. Massachusetts Declaration

[3] The SRA claims that the taking is a "demonstration" pursuant to M.G.L. c. 121B, §46(f), which section is an enumeration of the powers of an urban renewal agency.

of Rights, Article 10 (eminent domain taking of a person's land is prohibited "without his own consent, or that of the representative body of the people"). The legislative findings relevant to the SRA's eminent domain power are found in M.G.L. c. 121B, § 45, which is titled "urban renewal programs declaration of necessity." Section 45 sets out in the first two (2) paragraphs the factual legislative findings regarding the public purpose to responding to urban blight, specifically including the redevelopment of land "in accordance with a comprehensive plan to promote the sound growth of the community." With regard to public necessity, the legislature found that "[t]he necessity in the public interest for the provisions of this chapter **relating to urban renewal projects** is hereby declared as a matter of legislative determination" (emphasis added).

Accordingly, the "legislative determination" of public necessity, which is a necessary prerequisite to an eminent domain taking, is limited to the provisions of c. 121B "relating to urban renewal projects." The legislature has made ***no*** findings declaring that "demonstrations" regarding the elimination or prevention of urban blight are a public necessity requiring

the use of eminent domain powers.

The limitation within the declaration of necessity was undoubtedly a conscious one. The legislature made very similar findings regarding urban blight in M.G.L. c. 121A, §2, in connection with urban renewal corporations. The legislature notably used strikingly different language in its declaration of necessity regarding urban renewal corporations, as opposed to redevelopment authorities, declaring: "the necessity in the public interest for the provisions ***hereinafter enacted*** is hereby declared as a matter of legislative determination" (emphasis added). Had the legislature intended to declare all urban renewal activities pursuant to M.G.L. c. 121B to be covered by its declaration of necessity, it could have used the same language in Section 45, authorizing the use of eminent domain for all provisions enacted "hereafter" rather than expressly limiting its finding of necessity to matters relating to urban renewal projects. The legislative choice was likely made because the public powers of urban renewal corporations set out in M.G.L. c. 121A are more limited and can be utilized in all cases only with municipal and state approval. M.G.L. c. 121A, §§6, 11. By contrast, redevelopment authori-

ties have a wider variety of powers. See M.G.L. c. 121B, §§ 11 and 46. Therefore, the legislature specifically limited its declaration of necessity authorizing eminent domain takings and other public use of property to a subset of those powers exercised pursuant to urban renewal projects.

It is undisputed that the Putative Taking was not made as part of an urban renewal project. An "urban renewal project" is defined in G.L. c. 121B, §1 as "a project to be undertaken in accordance with an urban renewal plan…". No urban renewal plan was approved or is contemplated in connection with the Putative Taking.

The eminent domain taking of property absent an urban renewal project (and therefore an urban renewal plan) has not been authorized by the legislature. Accordingly, the Putative Taking is unauthorized and invalid.

b. Interpreting G.L. c. 121B, §46(f)to Permit an Eminent Domain Taking Outside of an Urban Renewal Project Would Allow an Unconstitutional Diversion of Public Powers and Property for Private Benefit

The limitation of the legislature's relevant delegation of eminent domain powers to those related to urban renewal projects is consistent with constitu-

tional limitations. Where the legislature authorizes public appropriations, including the taking by eminent domain, for projects in part utilized by private users or operators (such as the private developer contemplated in the "Demonstration Plan"), the legislation must "contain[] standards and principles governing and guiding the operation of the facilities in a manner which reasonably can be expected adequately (a) to protect all aspects of the public interest and (b) to guard against improper diversion of public funds and privileges for the benefit of private persons and entities." Opinion of the Justices, 356 Mass. 775, 796-797 (1969)(Proposed legislation authorizing the Massachusetts Turnpike Authority to construct a stadium for which eminent domain and tax exemptions would be used was unconstitutional because it failed to provide adequate standards and principles ensuring that private entities utilizing the facility would not be effectively subsidized). These "standards and principles" must be expressly set out in the authorizing statute and cannot be implied. Id. at 797.

When interpreting statutes implicating constitutional concerns, courts must "assume that the Legislature intends its statutes to pass constitutional mus-

ter." Chapman, 482 Mass. 293, 305-306 (2019). If M.G.L. c. 121B §46(f) were interpreted to allow an urban renewal agency to take property by eminent domain, partially to be conveyed for private use (as the "Demonstration Plan" clearly contemplates), without any safeguards in place to protect the public interest and guard against diversion of public rights to private purposes, such a blanket grant of authority would violate the constitutional requirements set out in Opinion of the Justices[4]. If, on the other hand, an eminent domain taking is only authorized pursuant to M.G.L. c. 121B, §§ 47-48; then those statutes provide the requisite standards that the constitution requires. M.G.L. c. 121B, §§ 47 and 48 require approval by state and municipal authorities with detailed standards set out for that approval.

The unaccountable powers that the SRA claims to hold are staggering. It allegedly can decide to "demonstrate" a vague solution to any problem it identifies as relating to urban blight, then take acres of

[4] At argument before the trial court in the hearing on the cross-motions for judgment on the pleadings, the SRA's counsel argued that the SRA's decision to avoid the oversight attendant to urban renewal projects and take property by eminent domain as a "demonstration" was left entirely to its discretion as long as there was some evidence of blight. R.A. Vol. I, pp. 148-150.

land worth millions (or tens of millions) of dollars by eminent domain without obtaining approval from any electorally responsible body. It need not decide what to do with the land until after it has taken it.[5] It is allegedly free to ultimately devote the land to whatever purposes it wants and can sell, lease or otherwise transfer it to private interests to use as it will, for whatever purposes it deems favorable. There would be no safeguards to ensure that a private developer does not receive the Property in a "sweetheart deal," because the SRA is exempt from public procurement laws. M.G.L. c. 30B, § 1(b)(25). The SRA asks the Court to infer that this result was intended merely because the legislature listed the ability to conduct "demonstrations" amongst urban renewal agencies' powers. Such a broad delegation of powers would be unconstitutional and cannot have been the legislature's intent.

The legislature could not have intended such a result, which would be blatantly unconstitutional. The SRA was not authorized to take the Property without complying with either §47 or 48.

[5] To date, the SRA has not identified what it will do with the excess portions of the Property not used for the public safety building.

c. The Urban Renewal Statutory Scheme Permits Eminent Domain Takings Only in Conjunction with an Urban Renewal Plan

The statutory scheme governing urban renewal agencies also clearly demonstrates that the legislature did not intend to grant to the SRA unfettered discretion to seize a multimillion-dollar parcel merely by labeling the act a "demonstration."

The lower court based its decision on the argument that the SRA had authority to take the Property under G.L. c. 121B, §11(d), which lists eminent domain as a general power of redevelopment authorities. That section can only be understood within the context of the overall statutory scheme, and within the confines of the constitutional requirements that a public/private venture be subject to detailed standards protecting the public interest from private diversion, as set out in Opinion of the Justices, *supra*. M.G.L. c. 121B, §11(d) identifies eminent domain as a general power of an operating authority (either a housing authority or a redevelopment authority), provided that the real estate taken was "found by it to be necessary or reasonably required to carry out the purposes of this chapter, or any of its sections." Section 11 does not set out a procedure for the SRA to make this

required finding.

As the SRA conceded below, the "purpose of this chapter," for which an urban renewal agency may exercise eminent domain powers, is set out within the legislative findings in G.L. c. 121B, §45. R.A. Vol. I, p. 36. The legislative declaration of necessity in §45 is limited to urban renewal projects undertaken pursuant to urban renewal plans. Further, § 45 states that "the redevelopment of land in decadent, substandard and blighted open areas **in accordance with a comprehensive plan to promote the sound growth of the community** is necessary in order to achieve permanent and comprehensive elimination of existing slums and substandard conditions and to prevent the recurrence of such slums or conditions or their development in other parts of the community or in other communities." (emphasis added). In the context of the section, which is titled "urban renewal programs declaration of necessity" and which limits its underlying legislative declaration of necessity to "urban renewal projects," the "comprehensive plan" referenced in the findings is clearly an urban renewal plan.

Therefore, where §11(d) authorizes an urban renewal agency to make eminent domain takings "found to

be necessary or reasonably required to carry out the purposes of this chapter, or any of its sections," that authorization only extends to urban renewal projects described in the legislative purpose description in §45. Only urban renewal projects have been found to be "necessary" by the legislature.

The reference to "any of its sections" does not broaden the eminent domain power by reference to §46. That section merely sets out additional powers of urban renewal agencies, and its purpose, as set out in its introductory clause, is to give urban renewal agencies "all the powers necessary or convenient to carry out and effectuate the purposes of relevant provisions of the General Laws." M.G.L. c. 121B, §46. Those purposes are also set out in §45.

The remaining statutory scheme within the urban renewal sections of M.G.L. c. 121B confirms that the legislature intended that urban renewal agencies' eminent domain power be limited to the confines and public protections of an urban renewal project.

Notably, G.L. c. 121B, §47 is titled "Urban renewal programs; acquisition by eminent domain; notice; petition." Accordingly, that section sets out the general procedures required before an urban renewal

agency may take property by eminent domain. Under that section, an urban renewal agency may only take property by eminent domain "with the consent of the [Massachusetts] department [of housing and community development] and municipal officers." Urban renewal agencies' authority to take by eminent domain can be exercised only "after a public hearing of which the land owners of record have been notified by registered mail and of which at least twenty days notice has been given by publication in a newspaper having a general circulation in the city or town in which the land lies it has determined to be a decadent, substandard or blighted open area and for which it is preparing an urban renewal plan." Id. Section §47 provides a specific appeal process whereby a landowner can challenge the determination that the land is in a blighted area. Section 47 provides the clear process that the legislature requires urban renewal agencies to follow in order to exercise eminent domain power as delegated in G.L. c. 121B §§ 11(d) and 45. It contains a process for the agency to "find" that the taking is necessary to accomplish the purposes of c. 121B, as required in §11(d). It requires that such taking be made in connection with a "comprehensive plan," as required in

§45, i.e., an urban renewal plan being prepared. Because §47 is to be utilized in preparation for an urban renewal project, a taking pursuant to that statute qualifies as "relating to urban renewal projects," the necessity of which the legislature has declared "as a matter of legislative determination."

Only one other section in chapter 121B sets out a process by which an urban renewal agency may take property by eminent domain: G.L. c, 121B, §48. That section sets out the process for formal approval of urban renewal plans. Importantly, the section states: **"[w]hen the urban renewal plan or such project has been approved by the [Massachusetts] department [of housing and community development] and notice of such approval has been given to the urban renewal agency, such agency may proceed at once to acquire real estate** within the location of the project, either **by eminent domain** or by grant, purchase, lease, gift, exchange or otherwise." Emphasis added. Before an urban renewal agency may take property by eminent domain as part of an urban renewal plan, the plan itself must be approved by: the City Council and Mayor after public hearing with due notice; any existing planning board; and the Massachusetts Department of Housing and Commu-

nity Development, which cannot approve the plan unless it finds:

> (a) the project area would not by private enterprise alone and without either government subsidy or the exercise of governmental powers be made available for urban renewal[6];
>
> (b) the proposed land uses and building requirements in the project area will afford maximum opportunity to privately financed urban renewal consistent with the sound needs of the locality as a whole;
>
> (c) the financial plan is sound;
>
> (d) the project area is a decadent, substandard or blighted open area;
>
> (e) that the urban renewal plan is sufficiently complete, as required by section one; and
>
> (f) the relocation plan has been approved under chapter seventy-nine A.
>
> M.G.L. c. 121B, §48.

Although an urban renewal agency can take preliminary steps to obtain control of property within an urban renewal area before a plan is formally approved;

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[6] The SRA was unlikely to obtain this finding. The SRA's primary identified reason that the Property was "blighted" was that a partnership dispute occurred that put development on hold after the Property had been permitted for a residential development. R.A. Vol. II, p. 69. The relevant litigation had concluded with a judgment in the Suffolk Superior Court prior to the Putative Taking (which was affirmed by this Court less than a month after the Putative Taking). R.A. Vol. I, p. 32. There is no reason that Cobble Hill could not have redeveloped the Property as a private enterprise or sold the Property to a developer to develop it, without government interference after the conclusion of that litigation.

it is ***expressly*** prohibited from obligating itself to acquire any such property (*e.g.*, by recording a taking by eminent domain) without final approval of the plan, except under the procedures outlined in G.L. c. 121B, §47.

Similarly to § 47; § 48 conforms to the requirements set out in Sections 11(d) and 45 for the use of eminent domain in that it sets out a procedure for a finding that the urban renewal plan incorporating the taking meets the legislatively-declared purposes and also authorizes the taking as part of a "comprehensive plan" and an "urban renewal project." Finally, it sets out "standards and principles" protecting the public interest as required under Opinion of the Justices, *supra*.

Other than an eminent domain taking pursuant to sections 47 or 48, no other section within chapter 121B sets out a process for the exercise of eminent domain, or for an urban renewal agency to make the findings required in section 11(d) or to establish the "comprehensive plan" and "urban renewal project" required in § 45. No other statute sets out "standards and principles" to protect the public nature of the project for which land is taken. Both statutes setting

out eminent domain procedures require approval from both the municipality and the Commonwealth before a redevelopment agency can take property by eminent domain.

The statutory scheme is clear. Eminent domain is authorized under chapter 121B only pursuant to statutory provisions that provide for:

- A process with notice and a public hearing whereby an urban renewal agency can make the findings meeting the purposes set out in section 45 related to blight and the requirement of public action to accomplish redevelopment;
- A comprehensive urban renewal plan to accomplish the goals in section 45;
- An urban renewal project as defined in section 1 (i.e., a project related to an urban renewal plan); and
- Approval from representatives of the publicly elected state and local governments.

These elements exist only within M.G.L. c.121B, §§47 and 48. The SRA has not complied with the requirements of either statute. Specifically:

- The SRA has not obtained approval or

consent of the Massachusetts Department of Housing and Community Development (required for both §§47 and 48);

- The SRA has not prepared an urban renewal plan or even commenced preparation of such a plan (§§47 and 48);

- The SRA has not obtained approval from the City of Somerville's municipal officers of an urban renewal plan (§48) or of a taking in contemplation of an urban renewal plan (§47).

The SRA's position is that it was free to take the Property by eminent domain as part of a "demonstration" pursuant to G.L. c. 121B, §46(f). Section 46(f) does not alter the statutory requirements. It would be absurd to read that provision to dispense with all statutory and constitutional safeguards associated with an eminent domain taking.

Section 46(f) states, in its entirety, that an urban renewal agency has the power: "to develop, test and report methods and techniques and carry out demonstrations for the prevention and elimination of slums and urban blight." The section does not mention eminent domain. It does not set forth any process for a finding that an eminent domain taking is necessary to

accomplish the purposes of chapter 121B. It does not require that any such "demonstrations" be accomplished in accordance with a "comprehensive plan." It does not require that any "demonstrations" be part of an urban renewal project, and no such urban renewal project was initiated in connection with the Putative Taking of the Property. Further, § 46(f) identifies no "standards and principles" that protect the public interest as required by Opinion of the Justices.

The trial court decided that section 11(d) should be interpreted to authorize an eminent domain taking for a "demonstration" conducted pursuant to M.G.L. c. 121B, §46(f). This decision was erroneous. The trial court's interpretation violates both the text and the spirit of the statutory scheme. First, the power to engage in "demonstrations" is expressly separate from the power of eminent domain, as demonstrated in G.L. c. 121B, §46, which states that the powers set forth therein (including the demonstration power) are "in addition to those specifically granted in section eleven." Second, the legislative findings set out in section 45 clearly establish that the legislature has determined the necessity of eminent domain takings only in the context of a "comprehensive plan" and an

"urban renewal project," which are not applicable to demonstrations. Additionally, the brief language in §46(f) provides no procedure for making "findings" that an eminent domain taking is necessary to accomplish the purposes of the statute, a necessary element of the eminent domain power under section 11(d) or the constitutionally required "standards and principles" to protect the public interests as required in Opinion of the Justices.

The SRA's argument that it can willy nilly take property without any safeguards would dramatically undermine the checks and balances carefully set out by the legislature, consistent with the Opinion of the Justices requirement, before an unelected redevelopment authority can exercise eminent domain powers. Section 47 provides a mechanism for eminent domain takings in preparation for an urban renewal plan, which includes a public hearing, specific notice rights, required approval by the Commonwealth and the City and a specific appeal right for a landowner whose property was taken. Section 48 provides for a detailed political process to establish an urban renewal plan, including necessary public hearings, approval by the City, confirmation by the planning board that the

plan is based on a local survey and consistent with the City's comprehensive plan, and approval by the Commonwealth only after extensive required findings. An eminent domain taking as part of an urban renewal plan is expressly prohibited until the plan has been approved by the Commonwealth.

It makes no sense that the legislature would have set out such stringent requirements for eminent domain takings in the context of a publicly accountable urban renewal plan, while leaving a backdoor option for an urban renewal agency to engage in large scale eminent domain takings any time it chose to "demonstrate" something relevant to the elimination of blight, without complying with any of the steps required for an urban renewal plan. Indeed, the SRA's expansive interpretation of its "demonstration" powers would render its urban renewal project powers unnecessary ad obsolete. Virtually any urban renewal project a redevelopment authority could choose to undertake could be said to "demonstrate" some aspect of its goal to remove or prevent urban blight. If the SRA's position is upheld, redevelopment authorities could in all cases avoid the cumbersome process of obtaining approval of an urban renewal plan by conducting all such future

projects as nominal "demonstrations" subject to no approval or oversight.

It is inconceivable that the legislature would have authorized redevelopment authorities to circumvent the procedural safeguards set out in §§ 47 and 48 and take property by eminent domain with no oversight or accountability any time they decide that they wish to conduct a "demonstration." This would give the SRA and other unaccountable urban renewal agencies eminent domain discretionary powers vastly exceeding those of any other local governmental body in the Commonwealth. (See, *e.g.* M.G.L. c. 40, §14; c. 43, §30). Accordingly, the SRA was not authorized under the statutory scheme to take the Property by eminent domain.

Additionally, the legislative history of the relevant sections of M.G.L. c. 121B dictates against the broad powers claimed by the SRA. The relevant language currently set out in M.G.L. c. 121B, §46 was originally part of M.G.L. c. 121, §26AAA, which was adopted as part of the Acts and Resolves of 1955, Chapter 654. Notably, the original draft of that statute (House Bill 2863) in relevant part authorized redevelopment authorities to "carry out demonstrations **and other activities for the prevention and the elimi-**

nation of slums and urban blight." Emphasis added. The catch-all phrase "and other activities" was deleted before passage, evidencing the legislature's intent for the relevant power to be limited in scope.

Further, the former M.G.L. c. 121, §26AAA prefaced its enumeration of redevelopment authorities' powers with the phrase "all powers necessary and convenient to undertake and carry out urban renewal plans and urban renewal projects." See Acts of 1955, Chapter 654, § 4. That statute was repealed in 1969, along with other urban renewal statutory sections and reorganized in substantially similar form within M.G.L. c. 121B. M.G.L. c. 121, §26AAA was replaced with M.G.L. c. 121B, §46. The modification of the enumeration of powers was changed within Section 46 to read: "all the powers necessary or convenient to carry out and effectuate the purposes of relevant provisions of the General Laws." The minor change in wording from "undertake and carry out urban renewal plans and urban renewal projects" to "carry out and effectuate the purposes of relevant provisions" cannot have been intended to expand by implication the SRA's powers in the broad scope it suggests. The "purposes of relevant provisions," described in Section 46, unspecified in

the text, are clearly intended to refer to provisions dealing with urban renewal plans and projects, retaining the original meaning from M.G.L. c. 121, §26AAA. This intent is particularly clear when the statue is viewed in conjunction with the preceding section (M.G.L. c. 121B, §45), which sets out the purpose of the urban renewal statute and limits its declaration of necessity to "urban renewal projects."

The trial court cited two other trial court decisions in support of its decision that the SRA has limitless authority to seize property by eminent domain without state or municipal approval associated with "demonstrations": Tremont on the Common Condominium Trust v. Boston Redevelopment Authority, Suffolk Superior Court C.A. No. 01-2705, 2002 Mass Super., LEXIS 564 (Botsford, J.) and Marchese v. Boston Redevelopment Authority, Suffolk Superior Court C.A. 13-3768, 2018 WL 7199760 (Connolly, J.). Neither case is binding precedent. Tremont was never appealed, and Marchese was upheld on other grounds because the Supreme Judicial Court determined that the plaintiff lacked standing, so it did not reach the issue as to whether the taking involved in the case was legally authorized. Marchese v. Boston Redevelopment Authority, 483

Mass. 149 (2019). Cobble Hill requests that this Court find that the Tremont case was wrongly decided, as was the Marchese trial court opinion, which relied entirely on the Tremont decision's reasoning.

In Tremont, the trial court leaned heavily on the wording of M.G.L. c. 121B §11(d) and §46(f) to find that a redevelopment authority has the power to take property by eminent domain to effect a demonstration project, while providing a cursory and flawed analysis of the key provision— M.G.L. c. 121B, § 45— which contains the necessary legislative declaration of necessity.

Sections 11(d) and 46(f) are simple enumerations of powers, with no procedures set out for how they may be exercised. Cobble Hill does not question that, when properly exercised, the SRA has the power to take property by eminent domain, or that it has the power to make demonstrations to prevent urban blight. However, the eminent domain power is limited by the language in §45 that finds a "public necessity" (a constitutional requirement for a valid taking) only in connection with an "urban renewal project." Further, an eminent domain taking of property to be partially used by private developers cannot be effected without

procedural safeguards ensuring that the public interest is protected and not diverted to private benefit. Opinion of the Justices, *supra*. These points were entirely missed in the Tremont reasoning.

Although the trial court in Tremont quoted the entirety of §45; it failed to recognize or even discuss the key language: "the necessity in the public interest for the provisions of this chapter relating to urban renewal projects is hereby declared as a matter of legislative determination." In addressing the statute's reference to a "comprehensive plan, the Tremont trial court erroneously stated that "the section nowhere defines that 'plan' as being limited to a formal 'urban renewal plan' within the meaning of c. 121B, § 1, and more to the point, nowhere restricts an agency's power of eminent domain to taking property in conjunction with an approved 'urban renewal plan.'" 2002 Mass. Super. LEXIS 564 at *44. On this crucial point, the trial court was clearly wrong. Although §45 does not use the phrase "urban renewal plan"; its ultimate declaration of necessity was limited to "urban renewal projects," which, by definition, are limited to projects pursuant to "urban renewal plans." This mistake by the trial court undercuts the entire

basis of its holding—that no statutory language exists limiting the delegation of power to activity related to urban renewal plans.

Additionally, the Tremont court's determination that the legislature's grant of eminent domain authority appears to be "broad" in its scope completely ignores the Opinion of the Justices requirements. The legislature cannot constitutionally grant broad eminent domain powers to allow private redevelopment without specific "standards and principles" ensuring the proper public nature of the project. Id. The legislature could not have intended to grant such "broad" discretion to exercise eminent domain powers for vague "demonstration" purposes. Such a delegation would be unconstitutional. Id.

The Tremont case involved the eminent domain taking by the Boston Redevelopment Authority (the "BRA") of 2614 square feet of the public street that abutted the plaintiff's property. The Marchese case also involved the taking by the BRA of a Boston public street. The Tremont case involved minimal if any of the plaintiff's property rights infringed, and the Marchese case involved no such rights. It appears that neither plaintiff in Tremont or Marchese stressed the

importance of the "urban renewal project" limitation within the legislative declaration of necessity in M.G.L. c. 121B, §45 or the Opinion of the Justices holding. It is understandable that the trial court in Tremont missed their import as well in the context of that case. The Marchese trial court offered no new analysis and simply relied on the Tremont decision. Neither case was subject to appellate review on the relevant issue. Cobble Hill asks this Court to conduct that review and invalidate the taking in the instant case.

d. The Putative Taking Did Not Demonstrate Methods and Techniques for the Prevention and Elimination of Slums and Urban Blight

In addition to the lack of general authority to take property outside of urban renewal projects, the SRA has grossly exceeded its authority to conduct "demonstrations" with regard to the underlying project.

M.G.L. c. 121B does not define "demonstration." As potentially relevant to the statute, "demonstration" has been defined to mean "an explanation by example, experiment, etc.; practical showing of how something works or is used." Webster's New Universal Dictionary of the English Language, Unabridged (1977).

There is nothing about the SRA's project that involves an explanation, experiment or any "showing of how something works." The project cannot be reasonably interpreted to be for the purposes of "demonstrating" anything. The "Demonstration Plan" created by the SRA below includes a specific "Objectives" section (Section III.), which lists three objectives for the plan: A. the elimination of urban blight; B. For use for the City of Somerville's public safety building; and C. an undefined "transformative development opportunity" in which the SRA envisions a future mixed-use transit-oriented development. R.A. Vol. II, pp. 88-90. The concept of a "demonstration" does not appear within the identified "objectives." Id.

The second purpose does not "demonstrate," show or explain anything. It is a straightforward identified municipal need that could have been the subject of a simple taking by the City of Somerville to meet a plain public purpose. However, such a taking would have been limited to the property necessary for the use. See Massachusetts Declaration of Rights, Article 10. The Putative Taking targeted land beyond what was planned for the public safety building. R.A. Vol. II, p 90.

The first and third identified purposes were to replace the Property's current use and configuration, which the SRA labels as blight, with a new set of uses more to the SRA's liking, including the public safety building and private use or uses to be determined later. Notably, the "Demonstration Plan" states: "[t]he primary objective for the Project is to eliminate blight and recurrence of blight by redeveloping an existing property with structures which are structurally substandard or have deteriorated to a degree rendering rehabilitation impractical." R.A. Vol. II, p.88. There is nothing about this objective that differentiates the project from the SRA's core function of urban renewal, which should be conducted pursuant to an urban renewal plan pursuant to M.G.L. c. 121B, §48. In fact, the SRA enumerates twelve (12) more specific subordinate objectives[7] within the category of removing urban

[7] The specifically identified subordinate objectives are:
(a) To secure the elimination and prevent the recurrence of blighted, deteriorated, deteriorating, or decadent con-ditions in the project area;
(b) To insure the replacement of such conditions by well-planned, well-designed improvements which provide for the most appropriate reuse of the land in conjunction with the City's comprehensive Plan, SomerVision;
(c) The improvement of land use and traffic circulation;
(d) The improvement of public facilities;

blight, and even there makes no mention of a demonstrative purpose. R.A. Vol. II, p. 88.[8]

The "Demonstration Plan" does not identify any "methods or techniques" that it is demonstrating. The only apparent reason to call the project a "demonstration" was to avoid the oversight associated with a full-blown urban renewal plan. That is not a legitimate "demonstration." In order for the SRA to take

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(e) The provision of a decent, pleasant, and humane environment involving a mixture of those land uses needed to produce balanced development;
(f) To maximize the full socio-economic potential of the project area with the most appropriate land uses and densities, and consistent with the other objectives stated herein;
(g) To promote economic development which strengthens the City's tax base without unacceptably impacting the physical, social, and cultural environment;
(h) To establish the minimum necessary land use controls which promote development, yet protect the public interest;
(i) To establish a set of controls which are adaptable to both current and future market conditions;
(j) To secure development in the shortest possible time period;
(k) To establish a sense of identity and place for Inner Belt;
(l) To capitalize on the location next to the Washington Street Green Line Extension station.

[8] Elsewhere in the "Demonstration Plan," the SRA mentions in passing some vague, possible exemplary benefits of the project with reference to the public and private collaboration expected to occur. See R.A. Vol. II, pp. 70, 93. No substantial explanation is given as to any specific techniques or methods that are being demonstrated and the SRA has not yet even identified the private use allegedly to be demonstrated.

land from Cobble Hill intending to convey part of it to another private party, there must be detailed "standards and principles" established to ensure that the project is a public use and not diverted for private interests. Opinion of the Justices, *supra*. At a minimum, that should require that the term "demonstration" have its limited ordinary meaning and not be expanded to include any project that is within the SRA's whim. See Id. at 799 ("The Authority cannot be left to work out the details of inadequately stated legislative policies" to protect the public).

The instant project can be contrasted with the projects in the Tremont and Marchese cases, described *supra*. Tremont involved the taking of a portion of a public street to allow construction thereon for the restoration of the landmark Boston Opera House with an expanded staging area within a blighted area. The Marchese case involved a taking from the City of Boston of a roadway easement in front of Fenway Park in order to convey to the Boston Red Sox the right to close the street during baseball games and allow its use for street vendors. Both projects involved takings primarily from a municipality of a relatively minor character to approach a redevelopment problem in a

novel way.

The SRA's actions have none of those features. The Putative Taking is directed squarely against a private landowner. The Putative Taking involves almost 4 acres of urban land, which the SRA admits is worth more than $8,000,000 and which Cobble Hill believes is worth more than the $14,100,000 offer it rejected. The Putative Taking is not in any way novel or experimental or designed to "demonstrate" a creative method or technique. It is a pure redevelopment project, indistinguishable from an urban renewal project in all but the label the SRA has chosen to apply to it and should accordingly be subject to the same approval process.

V. CONCLUSION

For the foregoing reasons, the judgment should be reversed, and a declaration should enter holding that the Putative Taking was invalid.

Respectfully submitted,
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CERTIFICATON UNDER RULE 16 OF MASS.R.A.P.

Now comes, Joel E. Faller, counsel for the Plaintiff-Appellant, and hereby certifies that the Brief submitted herewith complies with the rules of court that pertain to the filing of briefs, including, but not limited to: Mass.R.A.P. 16(a)(6) (pertinent findings or memoranda of decision); Mass.R.A.P. 16(e) (references to the record); Mass.R.A.P. 16(f) (reproduction of statutes, rules, regulations); Mass.R.A.P. 16(h) (length of brief); Mass.R.A.P. 18 (appendix to the briefs); and Mass.R.A.P. 20 (form of briefs, appendices and other papers). The font used in this Brief is Courier New, 12 point. Not including the non-exclusionary pages, the Brief contains 50 pages.

I further attest that this brief is being filed and service via electronic filing.

/s/ Joel E. Faller
Joel E. Faller

ADDENDUM TABLE OF CONTENTS

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NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT
CIVIL ACTION NO. 19-01046

COBBLE HILL CENTER LLC

vs.

SOMERVILLE REDEVELOPMENT AUTHORITY

MEMORANDUM OF DECISION AND ORDER ON THE PARTIES' CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

notice sent 11.14.19 GAM JEF TMB JDM JPP GT VP FMD

This action concerns the authority of the defendant, Somerville Redevelopment Authority ("defendant" or "SRA"), to take by eminent domain under G. L. c. 121B, §§ 11 and 46(f) approximately four acres of property owned by the plaintiff, Cobble Hill Center LLC ("plaintiff" or "Cobble Hill"), as part of a "demonstration project plan," and not as part of an "urban renewal plan." The plaintiff brings this action seeking a declaration pursuant to G. L. c. 231A that the SRA is not authorized to take property as part of a demonstration and seeking judicial review pursuant to G. L. c. 249, § 4 and/or G. L. c. 121B, § 47 of the SRA's determination that the property at issue was blighted. Presently before the court are the parties' cross-motions for judgment on the pleadings. For the following reasons, the plaintiff's motion is **DENIED**, and the defendant's motion is **ALLOWED**.

BACKGROUND

The following facts are drawn from the Administrative Record (Docket No. 4).

I. Historical Background

The property at issue is located at 90 Washington Street in Somerville, and is part of a historically industrial area known as the Inner Belt ("Property"). In 1968, the SRA adopted the Urban Renewal Plan-Cobble Hill Urban Area, also known as the Inner Belt Urban Renewal Plan

("Inner Belt URP"), which targeted, in part, the Property to be taken for the purpose of eliminating blight and blighting factors, and to prevent the recurrence of blight. In 1971, in accordance with the Inner Belt URP, the SRA took by eminent domain a parcel of land that included the Property. In 1980, the SRA conveyed that parcel of land to a private developer, the predecessor in title to the plaintiff, pursuant to the terms of a 1976 land disposition agreement ("LDA"). In 1981, the developer opened the Cobble Hill Apartments, a four building, 224-unit complex on the parcel of land that is rented to income-eligible seniors and families. In 1982, the developer opened Cobble Hill Plaza, a 12,555 square foot strip mall, on the parcel.[1]

The Property at issue here is a 173,748 square foot (or nearly four acre) portion of the original parcel of land that includes the Cobble Hill Plaza and two parking lots, one of which is associated with the Cobble Hill Apartments. The residential complex itself is not part of the Property. Other than the strip mall and the parking lots, there have been no other improvements on the Property. Notwithstanding certain areas that are paved, the Property largely remains open and unimproved.

In 2012, the plaintiff explored the redevelopment of the Property. To that end, in 2013, the plaintiff subdivided the parcel of land originally conveyed by the LDA. The Property as it presently exists was created as a separate parcel of land pursuant to that subdivision. The plaintiff then submitted a proposal to construct a six-story, mixed-use development on the Property, which the Somerville Zoning Board of Appeals ("ZBA") conditionally approved in October 2013. In anticipation of the start of construction, the plaintiff evicted all the tenants of the strip mall and erected a temporary fence to secure the building in the summer of 2014.

[1] As part of the Inner Belt URP, a Holiday Inn also was developed on the parcel of land next to the Cobble Hill Apartments. See Ex. 14 at 14.

Around the same time, in July 2014, one of Cobble Hill's partners initiated a lawsuit against the other two partners concerning the proposed development of the Property, and that litigation caused the construction to halt during its pendency (the "*Mullins* litigation"). See *Mullins* v. *Corcoran*, No. 1484CV02302 (Compl. filed July 18, 2014). While the *Mullins* litigation was pending in Superior Court, the ZBA's conditional approval (which had been extended) expired in January 2016, and the land use controls of the Inner Belt URP expired in September 2016, without any additional development on the Property. The strip mall remains unoccupied and fenced off.

In July 2018, the court (Salinger, J.) entered judgment in favor of two Cobble Hill partners and against one in the *Mullins* litigation. Shortly thereafter, the partner against whom judgment entered (Mullins) filed a notice of appeal in that lawsuit. In April 2019, the Appeals Court affirmed the judgment in the *Mullins* litigation, and in June 2019, the Supreme Judicial Court denied review. See generally *Mullins* v. *Corcoran*, 95 Mass. App. Ct. 1107, 2019 WL 1553041 (2019) (Rule 1:28 decision), review denied, 482 Mass. 1106 (2019), petition for cert. filed, No. 19-548 (U.S. Oct. 24, 2019).[2]

II. The SRA's Demonstration Project Plan and the Taking of the Property

On February 7, 2019, while the *Mullins* litigation was pending before the Appeals Court, the SRA adopted a "Demonstration Project Plan" concerning the Property (the "Plan"). On February 14, 2019, the City Council approved the Plan. On February 21, 2019, the SRA and the City Council entered into a Memorandum of Agreement ("MOA") regarding the collaborative

[2] Following oral argument on the present motions, the Cobble Hill partner against whom judgment entered in the *Mullins* litigation filed a petition for a writ of certiorari before the Supreme Court of the United States.

implementation of the Plan. On February 19, 2019, the Mayor of Somerville approved both the Plan and the MOA.

In the Plan, the SRA explained that the Property is "highly visible in the neighborhood" and is located directly across from the new MBTA East Somerville Green Line station which is slated to open in 2021. Ex. 14 at 4. The Plan noted that due to its location, the Property is "well-situated as a major gateway in Somerville, with terrific vehicular access and visual prominence along a key corridor into the City." *Id.* at 17. The SRA also described the City's need for a new, modern public safety complex, and noted that the Property was deemed the most viable location for that complex.[3] The SRA contemplated that in addition to the new public safety complex, a portion of the Property could be used for "a transformative, mixed-use development program." *Id.* at 25.

The SRA also described the present condition of the Property, noting that the strip mall was in poor condition with "[a] sagging roof, chipped paint, and other details typical of a long uninhabited building [that] make the [P]roperty look decrepit."[4] *Id.* at 15. The fence erected around the building was falling apart and leaning over. Moreover, since the Property became vacant and through the time of the Plan, SPD received 15 calls concerning the Property, including for breaking and entering or larceny and "suspicious, sick, or unwanted persons" on the Property. *Id.* at 16. The SRA also noted that the underlying ownership of the Property was

[3] In 2016, the City began to consider a long-term solution to issues concerning the current facility that houses the Somerville Police Department ("SPD") headquarters as well as Engine 3 and staff of the Somerville Fire Department ("SFD"). The City commissioned a consulting team to conduct a space needs assessment in order to assist in planning for the development of a new public safety complex. See Ex. 14, Tab E. As part of that assessment, the City provided the consulting team with a list of potential sites for the new complex which included the Property. The consulting team and the City then developed a site evaluation matrix and criteria that the consulting team could use to score and rank the sites. See Ex. 14, Tab D at 3-1. On June 20, 2018, the consulting team provided its report which, based on the developed criteria, scored the Property highest as a potential site for the new complex. *Id.* at 3-3.

[4] Pictures of the Property in its then-current state were included in the Plan. See Ex. 14 at 14-16.

complicated because the Property itself involves a "web of easement" and the owners were "embroiled in a years-long legal dispute which led to the permanent abandonment of the 2013 special permit," and was unlikely to be resolved in the foreseeable future. *Id.* at 18. The SRA further explained that there was potential contamination on the Property that served as a barrier to private development by virtue of the Property's prior use as an iron foundry and the prior use of the adjacent site as a commercial laundry facility. *Id.* at 18-19. The SRA considered that the parcel shape was inefficient such that development would be a challenge unless the surrounding streets were altered and different ownership interests, including those pertaining to the easements, were acquired. *Id.* at 20.

In the Plan, the SRA found that the Property was the proper subject of a demonstration project pursuant to G. L. c. 121B, § 46(f) because it was "blighted and decadent." The SRA concluded:

> Targeted, public intervention is necessary and appropriate to eliminate the existing blight generated by this long-vacant site. Action is required to prevent the expansion of blight to the surrounding properties and the adjacent neighborhood. In addition, the proposed development program includes a new municipal public safety complex integrated into a comprehensive reuse plan, which could provide a useful example for other communities throughout the Commonwealth.

Id. at 28. The SRA acknowledged that demonstration projects "have not been widely used as development tools," but that this Plan "could serve as a test for possible application elsewhere . . . [given] [t]he unique combination of uses proposed on the site, including a municipal public safety complex combined with housing, office and other community uses [which] will require

thoughtful collaboration among the SRA, the City Council, the City, neighborhood stakeholders and the development community."[5] *Id.*

As contemplated under the Plan, on March 7, 2019, the SRA voted to adopt an Order of Taking, whereby the SRA took the Property in fee simple by eminent domain for itself pursuant to G. L. c. 121B, §§ 11 and 46(f), in order to "prevent[] and eliminat[e] . . . 'urban blight.'"[6] Ex. 23 at 1. The Order was duly recorded with the Middlesex South Registry of Deeds the following day.

On April 3, 2019, the plaintiff initiated this action seeking a declaration pursuant to G. L. c. 231A, § 1, that the SRA's taking of the Property was invalid, rendering the plaintiff the Property's lawful owner (Count I), and judicial review pursuant to G. L. c. 249, § 4 and/or G. L. c. 121B, § 47, of the SRA's finding that the Property was blighted (Count II). The parties subsequently filed the present cross-motions for judgment on the pleadings.

DISCUSSION

I. The SRA's Authority to Take Property as Part of a Demonstration (Count I)

The plaintiff seeks a declaration that the SRA is not authorized pursuant to G. L. c. 121B, § 46(f) to take property by eminent domain as part of a "demonstration," that is unconnected to an "urban renewal plan."[7] There is no binding precedent resolving this issue. However, the court is persuaded by the analysis of then-Superior Court Justice Margot Botsford in *Tremont* v. *Boston Redevelopment Authority*, No. 01-2705, 2002 Mass. Super. LEXIS 564, at *37-*45

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[5] As the parties noted, this is the first time the SRA has exercised its eminent domain power as part of a "demonstration" pursuant to G. L. c. 121B, § 46(f). However, the Boston Redevelopment Authority ("BRA") has previously done so on "multiple occasions." *Marchese* v. *Boston Redevelopment Auth.*, 483 Mass. 149, 153 n.8 (2019).

[6] Pursuant to the Order, the SRA awarded $8,778,000 in damages to the plaintiff as a result of the taking. See Ex. 23 at 2.

[7] The parties agree that the Property was not the subject of an urban renewal plan or project at the time of the taking. As discussed above, the Inner Belt URP expired in 2016.

(Mass. Super. Sept. 23, 2002), which supports the conclusion that the taking was a lawful exercise of the SRA's statutory authority under G. L. c. 121B, §§ 11 and 46(f).[8]

General Laws chapter 121B, section 11(d) confers on a redevelopment authority that serves as an urban renewal agency, like the SRA, "a very broad, general authority to take property by eminent domain." *Tremont*, 2002 Mass. Super. LEXIS 564, at *38. Specifically, the statute provides:

> Each operating agency . . . shall have the powers necessary or convenient to carry out and effectuate the purposes of the relevant provisions of the General Laws and shall have the following powers in addition to those specifically granted in this chapter:--
> . . .
> (d) To take by eminent domain under chapter [79] or chapter [80A], . . . any property, real or personal, or any interest therein, **found by it to be necessary or reasonably required to carry out the purposes of this chapter, or any of its sections**, and to sell, exchange, transfer, lease or assign the same . . . .

G. L. c. 121B, § 11(d) (emphasis added). Subsection 46(f) of the same chapter, 121B, confers on the SRA the power "to develop, test and report methods and techniques and carry out demonstrations for the prevention and elimination of slums and urban blight." It naturally follows from the unambiguous language of G. L. c. 121B that the SRA may exercise its authority to take property by eminent domain in order to carry out "demonstrations" for the prevention and elimination of slums and urban blight.

The court rejects the plaintiff's argument to the contrary that any taking must be connected to an approved "urban renewal plan" for the same reasons that Justice Botsford

[8] In the only other published opinion addressing this issue, Superior Court Justice Rosemary Connolly also adopted Justice Botsford's analysis. See *Marchese* v. *Boston Redevelopment Auth.*, No. 2013-3768, 2018 WL 7199760, at *10-*11 (Mass. Super. July 27, 2018) (Connolly, J.). After oral argument on the present motions, the Supreme Judicial Court affirmed Justice Connolly's decision on other grounds. See generally 483 Mass. 149 (holding that the plaintiff lacked standing to challenge the BRA's permanent taking of the Yawkey Way easement pursuant to G. L. c. 121B, § 46(f) and the subsequent sale of the easement rights to the Red Sox).

concluded there was no such limitation. Specifically, Justice Botsford explained that Section 46 grants additional powers to an urban renewal agency that are not otherwise provided in chapter 121B. Those additional powers are enunciated in eight separate subsections, (a) through (h). Subsections (c), (d), and (h) specifically reference urban renewal projects or plans which are both statutorily defined.[9] See G. L. c. 121B, § 1 (defining "urban renewal plan" and "urban renewal project"). In contrast, subsection (f), upon which the SRA relies here, makes no such reference. As Justice Botsford concluded, "[i]f the legislature had intended to tie 'demonstrations' to ones that formed components of an urban renewal plan, project or project area, it would have so stated." *Tremont*, 2002 Mass. Super. LEXIS 564, at *40-*41.

Justice Botsford found further support for this position in the language of G. L. c. 121B, § 45, which declares the purpose of and necessity for urban renewal programs generally, and provides, in relevant part:

> It is hereby declared that . . . because of the economic and social interdependence of different communities and of different areas within single communities, the redevelopment of land in decadent, substandard and blighted open areas **in accordance with a comprehensive plan** to promote the sound growth of the community is necessary in order to achieve permanent and comprehensive elimination of existing slums and

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[9] Those subsections provide an urban renewal agency with the power to:

> (c) to prepare or cause to be prepared **urban renewal plans**, master or general plans, workable programs for development of the community, general neighborhood renewal plans, community renewal programs and any plans or studies required or assisted under federal law;
> (d) to engage in **urban renewal projects**, and to enforce restrictions and controls contained in any approved **urban renewal plan** or any covenant or agreement contained in any contract, deed or lease by the urban renewal agency notwithstanding that said agency may no longer have any title to or interest in the property to which such restrictions and controls apply or to any neighboring property;
> (h) In any city whose population exceeds one hundred and fifty thousand, to own, construct, finance and maintain intermodal transportation terminals within an **urban renewal project area**. As used in this clause an "intermodal transportation terminal" shall mean a facility modified as necessary to accommodate several modes of transportation which may include, without limitation, inter-city mass transit service, rail or rubber tire, motor bus transportation, railroad transportation, and airline ticket offices and passenger terminal providing direct transportation to and from airports.

G. L. c. 121B, § 46(c), (d), & (h) (emphasis added).

> substandard conditions and to prevent the recurrence of such slums or conditions . . . that the acquisition of property for the purpose of eliminating decadent, substandard or blighted open conditions thereon and preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, the disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by urban renewal agencies and any assistance which may be given by cities and towns or any other public bodies in connection therewith are public uses and purposes for which public money may be expended and **the power of eminent domain exercised**; and that the acquisition, planning, clearance, conservation, rehabilitation or rebuilding of such decadent, substandard and blighted open areas for residential, governmental, recreational, educational, hospital, business, commercial, industrial or other purposes, . . . are public uses and benefits for which private property may be acquired by eminent domain . . . .
>
> It is further declared that while certain of such decadent, substandard and blighted open areas, or portions thereof, may require acquisition and clearance because the state of deterioration may make impracticable the reclamation of such areas or portions by conservation and rehabilitation, other of such areas, or portions thereof, are in such condition that they may be conserved and rehabilitated in such a manner that the conditions and evils enumerated above may be alleviated or eliminated; and that all powers relating to conservation and rehabilitation conferred by this chapter are for public uses and purposes for which public money may be expended and said powers exercised.
>
> The necessity in the public interest for the provisions of this chapter relating to urban renewal projects is hereby declared as a matter of legislative determination.

G. L. c. 121B, § 45 (emphasis added). As Justice Botsford explained, while the statute "mentions the need for redevelopment of land to be 'in accordance with a comprehensive plan,' the section nowhere defines that 'plan' as being limited to a formal 'urban renewal plan' within the meaning of c. 121B, § 1, and more to the point, nowhere restricts an agency's power of eminent domain to taking property in conjunction with an approved 'urban renewal plan.'"[10]

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[10] The redevelopment of the Property here is made in accordance with a "comprehensive plan," although not an "urban renewal plan." As the SRA notes in the Plan, the redevelopment of the Property is part of two larger plans. First, the Plan furthers SomerVision, the City's 20-year comprehensive plan, that designates the Property as among those to be transformed with dense, mixed-use development and sets a goal of targeting new development in transformative areas like the Inner Belt in order to ensure that new development will spur job growth. See Ex. 14 at 20. Second, the Plan furthers the Inner Belt Brickbottom Neighborhood Plan which was the result of community engagement and identifies core values that will be furthered by the Plan, see Ex. 14 at 20-21, for discussion. See

Tremont, 2002 Mass. Super. LEXIS 564, at *43. Moreover, as she noted, the second paragraph discussing the "acquisition and clearance" of blighted areas due to their state of deterioration makes no reference to a "plan" at all. See *id.*, at *44. Based on her reading of § 45, Justice Botsford concluded that "[t]his section supplies an unquestionably broad description of purposes for which an urban renewal agency such as the [SRA] may exercise the power of eminent domain." *Id.*, at *43. Thus, she determined that an urban renewal agency was not restricted to exercising its eminent domain power only in connection an urban renewal plan and rather that it could do so in connection with a "demonstration." This court agrees.

The plaintiff suggests that in this instance the court should decline to read the statutes at issue as broadly as Justice Botsford for two reasons, both of which are unavailing. First, the plaintiff argues that permitting the SRA to take property by eminent domain would provide a loophole to the procedural requirements of G. L. c. 121B, §§ 47 and 48, which provide for notice, a public hearing, and approval by the department of housing and urban development before a taking can be effectuated in connection with or in anticipation of an "urban renewal plan" or "urban renewal project." Second, the plaintiff asserts that even if, *arguendo*, a taking can be effectuated with respect to a "demonstration," it was not proper for the SRA to do so here given the size of Property. Indeed, the four-acre Property that the SRA took by eminent domain is far larger in scope than those considered in the only two other cases addressing a redevelopment authority's power to take property as part of a "demonstration" pursuant G. L. c. 121B, § 46(f). See generally *Marchese*, 2018 WL 7199760 (taking of an easement over Yawkey

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also Ex. 14, Tab G (Inner Belt Brickbottom Neighborhood Plan). As noted in the Plan, "[n]ot only will this Project eliminate blight by removing the existing decadent building, but also by pursuing the kind of transformative, mixed-use, transit-oriented development the community calls for in SomerVision and the Inner Belt Brickbottom Neighborhood Plan." Ex. 14 at 23.

Way, now Jersey Street, on days when there is a licensed event at Fenway Park); *Tremont*, 2002 Mass. Super. LEXIS 564 (taking of 2,614 square feet of Mason Street in order to restore the Boston Opera House). While the court acknowledges that the plaintiff raises valid concerns, both arguments require the court to read limits into the statutory language that do not exist. The court is not empowered to do so where the unambiguous language of the statutes provides the SRA with broad authority to take property by eminent domain as part of a "demonstration." See *Pielech* v. *Massasoit Greyhound, Inc.*, 423 Mass. 534, 539 (1996), quoting *Milton* v. *Metropolitan Dist. Comm'n*, 342 Mass. 222, 227 (1961) ("The scope of the authority of this court to interpret and apply statutes is limited by its constitutional role as a judicial, rather than a legislative, body . . . . We cannot interpret a statute so as to avoid injustice or hardship if its language is clear and unambiguous and requires a different construction.").

Accordingly, the court concludes that the SRA was authorized to take the Property by eminent domain as part of a "demonstration" pursuant to G. L. c. 121B, §§ 11 and 46(f).

II. The SRA's Determination of Blight (Count II)

The plaintiff contends that even if the SRA is authorized to effectuate a taking unconnected with an "urban renewal plan," the taking here is nonetheless invalid because the SRA improperly determined that the Property was blighted. The court disagrees. For the reasons that follow, the SRA is entitled to judgment on Count II.[11]

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[11] The court rejects the plaintiff's request that it deny SRA's motion for judgment on the pleadings on this claim, and permit the plaintiff to present additional evidence because the Administrative Record is "incomplete and relies entirely on hearsay." Pl.'s Opp'n & Cross-Mot. at 10. Here, the plaintiff seeks certiorari review under Count II. See Compl. ¶¶ 25-28 (Count II – Certiorari Review), citing G. L. c. 249, § 4 (certiorari statute) & G. L. c. 121B, § 47 (recognizing that where an urban renewal agency takes property by eminent domain in connection with an urban renewal plan, an aggrieved party may file a petition for certiorari in Suffolk Superior Court). But see *Tremont*, 2002 Mass. Super. LEXIS 564, at *71 (Section 47 only applies to eminent domain takings made while preparing an urban renewal plan, and not those effectuated under § 46(f) in connection with a demonstration). Discovery is not warranted on this claim because the court's review is limited to the administrative record filed by the agency. *Bielawski* v. *Pers. Adm'r of Div. of Pers. Admin.*, 422 Mass. 459, 464 (1996) ("On a writ of certiorari,

As an initial matter, the parties dispute whether the SRA's blight finding is reviewed under the "arbitrary and capricious" standard or the "substantial evidence" standard. It is this court's view that the former standard applies for the same reasons articulated by Justice Connolly in her decision. See *Marchese*, 2018 WL 7199760, at *12. However, given that the SRA's finding passes muster under either standard, the court shall analyze the blight finding under the substantial evidence standard which is less deferential to the agency. See *Tremont*, 2002 Mass. Super. LEXIS 564, at *48-*49 (declining to decide whether the "arbitrary and capricious" or the "substantial evidence" standard applied when the BRA's determination satisfied the latter standard).

The court's review of a decision in a certiorari proceeding is limited. See *Durbin*, 62 Mass. App. Ct. at 5. In the absence of a substantial legal error, the court reviews the administrative record to determine whether the decision was supported by substantial evidence. See *id.* Substantial evidence is "such evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 6, quoting *New Boston Garden Corp.* v. *Assessors of Boston*, 383 Mass. 456, 466 (1981). "Under the substantial evidence test, the reviewing court is not empowered to make a de novo determination of the facts, to make different judgments as to the credibility of witnesses, or to draw different inferences from the facts; it cannot disturb a choice

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the court's review is confined to the record and is for the purpose of correcting legal error . . . ." (internal quotations and citation omitted)). See, e.g., *Doucette* v. *Massachusetts Parole Bd.*, 86 Mass. App. Ct. 531, 540-541 (2014) ("On certiorari review, the Superior Court's role is to examine the [administrative] record . . . and to correct substantial errors of law apparent on the record adversely affecting material rights." (internal quotations and citations omitted)); *Durbin* v. *Board of Selectmen of Kingston*, 62 Mass. App. Ct. 1, 6-7 (2004) (judge properly denied request to present evidence extrinsic to the administrative record "[g]iven the constrained review on a petition for certiorari"). Even if the court were inclined to consider the plaintiff's request, it has pointed to no specific evidence absent from the record that would affect the court's analysis here. See Pl.'s Opp'n & Cross-Mot. at 10-11. By way of example, the plaintiff asserts that at the time of the taking, the *Mullins* litigation had been resolved and, thus, the plaintiff could have proceeded with its proposed development. This argument ignores the facts that at the time of the taking, the *Mullins* litigation was pending before the Appeals Court and that the ZBA's conditional approval of the proposed development expired more than three years earlier.

made below between two fairly conflicting inferences or views of the facts, even if it might justifiably make a different choice were the case before it de novo." *Durbin*, 62 Mass. App. Ct. at 6.

Here, the SRA determined that the Property was "blighted and decadent," and effectuated the taking in order to "prevent[] and eliminat[e] . . . 'urban blight.'" The terms "blight" and "urban blight" are not statutorily defined. However, the court adopts the definitions advanced by Justice Botsford in *Tremont* – "blight" is "something that impairs growth, withers hopes and ambitions, or impedes progress and prosperity," and "urban blight" "refer[s] generally to a condition in a portion of the city that is 'detrimental to the safety, health, morals, welfare or sound growth of a community,' is caused by one of a number of factors including the physical deterioration of facilities and buildings in the area, and that is not being alleviated or remedied 'by the ordinary operations of private enterprise.'" *Tremont*, 2002 Mass. Super. LEXIS 564, at *54-*55.[12] Applying these definitions, there is substantial evidence in the record to support the SRA's conclusion that the Property was blighted and that the taking was necessary for the "prevention and elimination of slums and urban blight." G. L. c. 121B, § 46(f).

As discussed in more detail above, the SRA concluded that the Property is part of an appropriate demonstration project because it will "eliminate the existing blight generated by this long-vacant site," and because action is necessary "to prevent the expansion of blight to the surrounding properties and the adjacent neighborhood." Ex. 14 at 28. See also Ex. 23 (Order of Taking) ("[T]he Authority has determined that the eminent domain taking of the Property is necessary and reasonably required to prevent and eliminate urban blight and to carry out the

[12] In her sound analysis, Justice Botsford relied in part on Chapter 121B's definitions of "blighted open area" and "decadent area." See G. L. c. 121B, § 1 (defining "blighted open area" and "decadent area").

purposes of Chapter 121B and the Plan."). The SRA further explained that the site is blighted "due to its dilapidated, unsafe, and unhealthy condition." *Id.* at 23. The record demonstrates that the Property had been subject of SRA action since 1968, when the agency adopted the Inner Belt URP. The SRA effectuated a taking of the Property because it was blighted and sold it to a developer in order to eliminate and prevent the recurrence of blight. Since that time, the only improvements to the four-acre Property are the 12,555 square foot strip mall which has been vacant and fenced off since mid-2014, and some pavement. The Property largely remains open and undeveloped but for the building that is in disrepair. The record reflects that the Property in its current state also is acts as a "magnet illicit activity," and is "uncomfortable and unwelcoming" for pedestrian. *Id.* at 16.

It is also clear that the blighted conditions were not being remedied "by the ordinary operations of private enterprise." The SRA identified several challenges to private redevelopment of the Property: (1) the web of easements underlying the ownership of the Property; (2) the ongoing legal dispute between the owners that was then pending on appeal and which resulted in the abandonment of the special permit obtained from the ZBA; (3) the potential contamination on the Property and the adjacent sites; and (4) the inefficient parcel shape. See *id.* at 18-20. See also *id.* at 23 ("Public intervention is warranted as the Property seems unlikely to be developed private due to ongoing litigation, its unusual parcel shape, and environmental contamination."). The SRA further concluded that this Property was primed to "address[] a crucial municipal need: the construction of a new, modern public safety complex." *Id.* at 24.

Substantial evidence supports the determination that the Property impairs and is detrimental to the sound growth of the community.[13] Moreover, as the Plan described, redevelopment of the Property is necessary to promote this objective given its location near the future MBTA station, its prominence as a major gateway for vehicular traffic in the City passed by 17,000 drivers each day, and consistent with SomerVision, City's 20-year comprehensive plan. Given that substantial evidence in the record supports the SRA's determination that the Property was blighted and that the taking must be effectuated in order to advance of the public purpose of preventing and eliminating urban blight, the SRA is entitled to judgment on Count II.[14]

[13] As noted in the Plan, "[s]ince 2014, when commercial and retail tenants were evicted from the Property, there has been no grocery store serving the neighborhood. The neighborhood remains the least developed and most economically and socially challenged part of the city with higher unemployment and a lower median household income." Ex. 14 at 8.

[14] The plaintiff highlights that in addition to the new public safety complex, the Plan also contemplates that some portion of the Property may be utilized for a mixed-used development. That there may be some incidental benefit to a private entity does not undermine the proper public purpose for which the Property was taken. See, e.g., *Benevolent & Protective Order of Elks, Lodge No.*, 403 Mass. 531, 551-552 (1988) (taking to redevelop "blighted open area" under G. L. c. 121B is a proper public purpose even if some portion of property was used to relocate Emerson College).

ORDER

For the foregoing reasons, the Defendant Somerville Redevelopment Authority's Motion for Judgment on the Pleadings (Docket No. 5) is **ALLOWED**, and the Plaintiff Cobble Hill Center LLC's Cross-Motion for Judgment on the Pleadings in Its Favor or Alternatively for Leave to Present Additional Evidence (Docket No. 6) is **DENIED**.

Joseph F. Leighton, Jr.
Associate Justice of the Superior Court

DATED: November 8, 2019

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2018 WL 7199760 (Mass.Super.) (Trial Order)
Superior Court of Massachusetts.
Suffolk County

Joseph P. MARCHESE,
v.
BOSTON REDEVELOPMENT AUTHORITY.

No. 2013-3768.
July 27, 2018.

Memorandum of Decision and Order on Cross Motions for Judgment on the Pleadings

Rosemary Connolly, Judge.

1** The plaintiff, Joseph Marchese ("Marchese"), brought this *certiorari* action under G. L. c. 121B, § 47 to challenge an eminent domain taking of an easement by the Boston Redevelopment Authority ("BRA"). Presented for decision are cross motions for judgment on the pleadings filed by Marchese and BRA. For the following reasons, Marchese's motion is ***DENIED and the BRA's motion is ***ALLOWED***.

BACKGROUND

Historical Framework

Fenway Park, Boston's popular and historic ballpark, has been the home of the Boston Red Sox since 1912. It was built on a parcel of land within Boston proper, which is now abutted by Lansdowne Street to the north, Ipswich Street to the east, Van Ness Street to the south, and Brookline Avenue and Yawkey Way to the west.[1] That parcel of land (and the ballpark itself) are now owned by the Olde Town Team Realty Trust ("Olde Town"). Olde Town is a Massachusetts real estate trust and the Boston Red Sox Baseball Club Limited Partnership is Olde Town's sole beneficiary. Today, Fenway Park is not only the oldest Major League Baseball ("MLB") park in continuous use in the United States, but the smallest ballpark still in use.

The location of the Red Sox's ballpark has long been a matter of both public and governmental interest. As early as the 1960s, the legislature began to consider plans for a new, larger stadium in the city of Boston ("Boston" or the "City"), with better access to public transportation and parking facilities. See, e.g., *An Act Creating the Greater Boston Stadium Authority and Authorizing Said Authority to Construct, Operate, and Maintain a Multi-Purpose Stadium and Appurtenant Facilities in or in the Vicinity of Greater Boston*, St. 1962, c. 778. A lack of public transportation and parking options contributed to low attendance figures, and Red Sox officials had expressed their belief that the team needed "a new stadium if it [was] to survive financially." See *Supplementary Report Relative to a Boston Multi-Purpose Sports Facility* at 14-15, Mass. Senate Rep. No. 1125 (1965). This early push to build a new baseball stadium with public funds struck out when, in 1969, the Supreme Judicial Court held that pending legislation to provide public funding to the Massachusetts Turnpike Authority for the purpose of developing a new athletic stadium was unconstitutional because the legislation did not set forth "appropriate standards and principles" to protect the public interest. See *Opinion of the Justices*, 356 Mass. 775, 795 (1969).

***2** That a legal challenge slowed but did not stem the interest in developing a new stadium, with government support. Public efforts to build a new ballpark in Boston experienced a revival in the 1990s. See, e.g., *An Act Relative to Development of Convention Facilities in the Commonwealth*, St. 1995, c. 006, § 18(f) (establishing a commission to make recommendations and file proposed legislation to build either a new convention center with a fixed seating component, or a separate facility to

host athletic events "including major league baseball") (emphasis added). On August 10, 2000, then Massachusetts Governor Paul Cellucci signed into law *An Act Relative to the Construction and Financing of Infrastructure and Other Improvements in the City of Boston and Around Fenway Park* (the "2000 Act"). See St. 2000, c. 208. The 2000 Act codified legislative findings that Fenway Park was "inadequate for the purposes for which it was designed and a new ballpark is required to attract and retain those athletic events which shall promote the economic health of the commonwealth and encourage further private development, including development of other commercial facilities." *Id.* at § 1(d).
The 2000 Act declared that "the acquisition and financing by the city of Boston of a suitable site within the city for the new ballpark is in furtherance of a public purpose and shall provide an essential stimulus to the development of the ballpark and the economic health and development of the city and the community adjacent to the ballpark … [and] shall promote and enhance public safety and convenience and shall provide an essential stimulus to the construction of the new ballpark and related facilities for economic development by private industry and the economic development of communities adjacent to the ballpark."

Id. at §§ 1(f), (i). The 2000 Act authorized the issuance of $100 million in state bonds to finance

infrastructure improvements in the vicinity of the ballpark development area[2] and $140 million in bonds to finance land acquisition, the relocation of residents within the ballpark development area, and environmental cleanup costs.[3] *Id.* at §§ 5(a), 8(a).

There remained tension among the various factions as to how best to achieve the desired outcome of creating an improved and self-sufficient ballpark in the City. The 2000 Act faced opposition from many people who sought, rather than developing a new ballpark, to improve the existing park and suggested that the existing Fenway Park could be redeveloped to allow for increased capacity and amenities. After the 2000 Act was signed into law, the Red Sox's owners struggled to secure the necessary parcels of land and infrastructure support necessary to construct the new ballpark. Meanwhile, in 2002 ownership of the Red Sox changed hands and the franchise was purchased by Fenway Sports Group (formerly known as New England Sports Ventures). Subsequent to that change in ownership, the conversation about what to do about Fenway Park moved in the direction of improving the existing park, not building a new one.

August 2002: Short Term Licensing Agreement

***3** In an effort to improve the park experience for fans, in 2002, the Red Sox's new owners[4] petitioned the City's Public Works Department to issue a permit for the temporary closure of Yawkey Way from Brookline Avenue to Van Ness Street during the 2002 baseball season "for the purpose of utilizing the public way as an extension of the ballpark for Red Sox home games only." See *License, Maintenance and Indemnification Agreement*, AR 1. The City had long closed Yawkey Way to vehicular traffic on Red Sox game days for safety purposes, but that closure did not allow the Red Sox to exclude persons from the area who were not ticketholders. If approved, the permit would extend the closure to all pedestrians except for ticket holders.

On August 29, 2002, the City, acting by and through its Public Works Commissioner, allowed the petition and entered into a short term licensing agreement ("Short Term Licensing Agreement") with the Red Sox, acting by and through the Red Sox's then president and CEO, Larry Lucchino ("Lucchino"), The Short Term Licensing Agreement granted the Red Sox "exclusive use, occupation, and control" of Yawkey Way from Brookline Avenue to Van Ness Street for up to four hours before, and up to two hours after the start of Red Sox baseball games from September 5, 2002 to the last Red Sox home game of 2002 in exchange for $900 per game.

October 2002: Proposed Interim Improvements

On October 22, 2002, less than two months after the Short Term Licensing Agreement had commenced, the Red Sox sent the

BRA an application for small project review under Article 80E of the Boston Zoning Code. The proposal accompanying the application ("proposal") asked the BRA to approve certain interim improvements to Fenway Park and designate the improvements as a "demonstration project" under G. L. c. 121B, § 46(f).

The proposal set forth two categories of improvements. Under the first category, the Red Sox proposed replacing Fenway Park's existing standing room areas with structured seating on top of the "Green Monster" in left field and on the right field roof. The Red Sox needed to acquire the fee simple interest in air and subterranean rights, over and below Lansdowne Street, to install the new seating structure, which would project over Lansdowne Street and require new foundation to be poured underneath the Lansdowne Street sidewalk

The second category of proposed improvements concerned concourse upgrades. The proposal noted that the Fenway Park concourse "has the most limited area for fan amenities, concessions, restrooms and circulation of any park in Major League Baseball" and that replacing the standing areas within the park with structured seating would further reduce the Red Sox's ability to provide "concessions and necessary fan amenities." The proposal stated that the Red Sox sought to enter into an agreement "that would permit the continued use of Yawkey Way as part of the concourse for home game days on a predictable basis for 2003 and beyond, in the same general manner" as it had been used under the Short Term Licensing Agreement. The proposal indicated that the demonstration project designation would allow the BRA to grant the Red Sox certain property rights that the proposed improvements would encroach upon. The proposal promised that "[i]n order… to carry out the streetscape improvements, the Red Sox would make specific repairs to Yawkey Way, including landscaping, lighting and special amenities" such as "a video board and a replica of the Green Monster scoreboard to be placed on the building facades above the adjacent Yawkey Way retail stores."[5] The proposal also stated that the proposed improvements would "provide an immediate upgrade to the fan experience, without a material impact to the surrounding neighborhood and businesses" and were "independent of any future plans" for Fenway Park.

Demonstration Project Implementation

***4** On November 7, 2002, a public meeting was held by the Fenway Planning Task Force.[6] The details of who attended the meeting are not clear, but the record indicates that the majority of attendees approved the Red Sox's proposal to the BRA, On December 5, 2002, the BRA's Board of Directors ("Board") voted to designate the proposed upgrades as a "Demonstration Project Plan" and initiated related eminent domain procedures.[7] In connection with these proceedings, the Board declared:

(a) That the Massachusetts Legislature in the Acts of 2000, Chapter 208 has found, that '… the current open air ballpark [the existing Fenway Park] is inadequate for the purposes for which it was designed …";

(b) That in order to protect against urban blight, the undertaking of the [proposal] and assistance in the acquisition and transfer of adjacent areas to the existing Fenway Park are in the best interest of both the [BRA] and the City of Boston, and requires the assistance of the [BRA];

(c) That the [BRA] may take by eminent domain certain rights in and over parts of Lansdowne Street and Yawkey Way for the [Proposal]; and

(d) Based on (a), (b) and (c) above, the [Proposal] constitutes a "Demonstration Project" under General Laws Chapter 121B, Section 46(f), as amended.

The same day, the BRA issued an Order of Taking for the fee simple interest in air and subterranean rights necessary to install the proposed new seating over Lansdowne Street ("Lansdowne Rights").

On January 16, 2003, the Board voted to approve the Demonstration Project pursuant to Article 80, Section 80E of the Boston Zoning Code. The same day, the BRA issued an Order of Taking ("2003 Order of Taking") for a limited easement over the portion of Yawkey Way between Brookline Avenue and Van Ness Street ("Yawkey Way Easement"). The 2003 Order of Taking stated that the BRA was taking the Yawkey Way Easement "to protect against or eliminate 'urban blight' as described in Chapter 121B, Section 46(f)." The 2003 Order of Taking also stated that the BRA was taking the Yawkey Way

Easement "subject to the terms and conditions" of a licensing agreement and that the use thereof "shall be limited to the surface use of the [Yawkey Way Easement] for those days and limited uses on which the Boston Red Sox have games at Fenway Park and subject further to the terms and conditions of the [licensing] Agreement." Unlike the permanent taking pursuant to which the BRA acquired the Lansdowne Rights, the 2003 Order of Taking stated that it was only "temporary in nature" and is "in effect through the last game day in the tenth calendar year from and after" the 2003 Order of Taking was recorded.[8]

After the BRA acquired the Lansdowne Rights it engaged with the Red Sox ownership to further the efforts to upgrade and improve the park and environs instead of building a new stadium in another location. On February 12, 2003, the BRA and the Red Sox executed a License, Maintenance and Indemnification Agreement ("2003 LMI") granting the Red Sox a license to use the Lansdowne Rights and the Yawkey Way Easement on game days, just before and after games for a ten-year period that commenced on February 1, 2003, and would end on the last Red Sox game of the 2013 MLB Season, In consideration for the ten year game-day license, the Red Sox agreed to pay the BRA $165,000 each year, subject to an annual percentage adjustment no greater than 5% of the increase in the Consumer Price Index from the previous license year.[9]

***5** The 2003 LMI stated that the Red Sox's license to use the Yawkey Way Easement encompassed the "right to temporarily close and have exclusive use, occupation, and control of [the Yawkey Way Easement]… for the installation of portable fencing, turnstiles and any other structures or equipment associated with the Permitted Activities… in connection with the utilization of the area *as an extension of the Fenway Park concourse area during all Red Sox home games which require* a ticket for admission to Fenway Park," (Emphasis added) The Red Sox were permitted to close the Yawkey Way Easement area "to the public, including pedestrian and vehicular use or other public activities" for four hours prior to the start of each game and the earlier of two hours after each game or midnight. The 2003 LMI also authorized the Red Sox to "use third parties to provide certain operations, services or management" service in connection with their use of the Yawkey Way Easement.

2013 Ratification and Confirmation

The Demonstration Project was not without critics. On February 16, 2012, the Commonwealth's Office of the Inspector General ("OIG")[10] wrote the BRA a letter in connection with its ongoing review of the Demonstration Project and the 2003 LMI in particular. The letter cautioned the BRA that its review had led the OIG "to conclude that the [2003 LMI] pertaining to Yawkey Way cannot be renegotiated, extended or renewed under existing state law absent a new taking" and reminded the BRA of its obligation to ensure that the City received fair market value for the licensing of the Yawkey Way Easement, either by following "procurement practices set in G. L. c. 30B, or seek[ing] special legislation in order to convey the rights to Yawkey Way." The OIG publicized its objections, however, importantly, the OIG's recommendations in this regard were not binding on the BRA. See G. L. c. 12A, §§ 1 et seq.

Toward the end of the 2003 LMI and 2003 Order of Taking, on September 26, 2013, BRA staff distributed copies of a memorandum titled "FENWAY PARK DEMONSTRATION PROJECT PLAN AND ASSOCIATED ACTIONS" ("Memorandum") to the Board and indicated an intent to seek a vote on the issues therein the same night.[11] The Memorandum proposed that the Board "ratify and confirm the BRA's adoption" of the Demonstration Project pursuant to G. L. c. 121B, § 46(f), and stated, in relevant part that

Fenway Park, as improved, is now a top tourist attraction in the City of Boston and the Boston Red Sox have set team and major league baseball attendance records throughout the course of the agreement. Moreover, the stabilization of the Red Sox use of historic Fenway Park has played a significant role in the development of the surrounding neighborhood. In the ten years of the agreement, over $2.2 billion of private, non-institutional funds have been invested in residential and commercial development .... Visitor spending attributable to events at Fenway Park since 2002 also exceeds $2 billion.

In addition to the spin-off effects in the Fenway Neighborhood and elsewhere in the city, the Boston Red Sox have also paid multiple times more in taxes to the City of Boston and the Commonwealth of Massachusetts since the commencement of the existing agreement. The Red Sox have paid $28 million to the City of Boston in taxes since 2002 and $36 million to the Commonwealth during that time. These figures represent an approximately threefold increase from the preceding ten years.

***6** The Memorandum continued that the Red Sox and BRA sought to "continue the success" attributable to the Demonstration Project and "to take certain measures for the prevention of urban blight." The Memorandum stated that the BRA sought to accomplish two goals: "(I) preserve the economic benefit to the City of Boston that the [Demonstration Project] has produced; and (2) protect the taxpayers by receiving fair compensation for the future use of rights in both Yawkey Way and Lansdowne Street." The Memorandum thus proposed the adoption of a permanent Order of Taking of the Yawkey Way Easement, "on days when there is a licensed event at Fenway Park and only for a period of time before, during and after the event." The Memorandum proposed that the BRA sell the Yawkey Way Easement to the Red Sox "for as long as major league baseball games are played at Fenway Park."[12]

The BRA calculated the value of the Yawkey Way Easement by multiplying $60 per square foot (the annual revenue potential of "quality retail space in the Fenway neighborhood") by 32.87% (the percentage of one year that reflected the 120 days that the Red Sox were estimated to use the Yawkey Way Easement) to determine the annual revenue potential of the Yawkey Way Easement was $19.72 per square foot. The BRA concluded that the annual revenue potential of the Yawkey Way Easement was $341,156 by multiplying the $19.72 price per square foot by the 17,300 square foot area of the Yawkey Way Easement. Based on the seven percent capitalization rate[13] for retail space at that time, the BRA determined that the value of the rights to the Yawkey Way Easement was $4,873,657. The OIG later concluded this price worked out to approximately $4,000 per event day for ten years, and $0 per event thereafter.

At the 5:30 p.m. Board meeting on September 26, 2013, the BRA staff gave a thirty-six minute presentation that summarized the information in the Memorandum, followed by a question and answer session. Following the presentation, the Board voted four to one in favor of ratifying and confirming the Demonstration Project. The BRA's process while unusual did not violate any internal procedures or regulations.[14]

A permanent Order of Taking ("2013 Order of Taking") for the Yawkey Way Easement issued immediately after the Board's September 26, 2013 vote. Like the 2003 Order of Taking, the 2013 Order of Taking stated that the BRA was taking the Yawkey Way Easement for "the prevention and elimination of 'urban blight' as described in Chapter 121B, Section 46(f)," The 2013 Order of Taking expanded the scope of the Yawkey Way Easement to "those days at which a duly licensed event is to be held at [Fenway Park]" and was not simply limited to home games as the earlier agreement had been

***7** On November 4, 2013, the BRA and the Red Sox executed a "Master Agreement," which built upon and made permanent the terms of the 2003 LMI. The recitals of the Master Agreement assert, in pertinent part, that
Fenway Park, though still in use, fell into disrepair in the late 20th Century which had a degrading impact on properties located in its immediate proximity and a blighting influence on the surrounding neighborhood. By the year 2000, the roughly triangular area in the Fenway neighborhood … was characterized by low densities, underutilized properties, disparate uses and open areas with limited prospect of private investment ("Redevelopment Area").

[A]s part of an economic development plan which included construction of a new Fenway Park, the Massachusetts Legislature found and declared, in Chapter 208 of the Acts of 2000, that the Redevelopment Area (referred to as the ballpark redevelopment area) was an "economic development area" defined to mean a blighted open area or a decadent area as defined in Chapter 121B and authorized the expenditure of up to $240 million in taxpayer money for, among other things land acquisition, infrastructure improvements and a parking facility.

The Master Agreement also stated that the BRA "recognize[d] that it is in the public interest to preserve Fenway Park and to encourage sound development in the areas to induce the [Red Sox] to maintain Fenway Park as a first class destination location and to prevent blighting conditions in the Redevelopment Area if Fenway Park were to fall into disrepair."

The BRA and the Red Sox also executed a Land Disposition Agreement ("LDA") that day. In Section 3.01 of Article III of the LDA, titled "RESTRICTIONS AND CONTROLS UPON THE PROPERTY," the BRA acknowledged that "the continued authorization to host the type and frequency of Fenway Events is an important element of the Agreement and the [BRA] enters into this Agreement with the expectation that events of this nature and frequency will continue ...."

Section 3.02 of the LDA set forth the following terms with respect to the scope of the Yawkey Way Easement:

The [Red Sox] agree[] that the Grant of Easement from the [BRA] to the [Red Sox] of the Yawkey Rights shall contain convents binding on the [Red Sox], proving that the holder of the Yawkey Rights:

(i) May temporarily close that part of Yawkey Way located within the Yawkey Rights to the general public including pedestrian use, vehicular use and other public activities, during the period of time four (4) hours before the start of a Fenway Event until two (2) hours after the conclusion of the Fenway Event at which time that part of Yawkey Way temporarily closed shall be re-opened and restored to its condition immediately prior to closing.

…

(v) Shall be permitted to employ, use and otherwise engage third parties to provide certain operations, services or management in relation to the use, operation and maintenance of the Yawkey Rights,

On December 23, 2013, the BRA recorded a Grant of Easement officially conveying the Yawkey Way Easement to the Red Sox pursuant to the terms set forth in the Master Agreement and LDA.

OIG Review of the 2013 Ratification and Confirmation

After completing its review of the BRA's 2013 vote to ratify the Demonstration Project, on October 26, 2015, the OIG wrote a nineteen-page letter to the BRA sharply criticizing the agreements the BRA entered into with the Red Sox to continue the Demonstration Project.

***8** The OIG criticized the BRA because it only obtained an oral consult on the value of the Yawkey Way Easement and "did not include a value based on Yawkey Way concession revenues, in part because the Red Sox only provided limited gross revenue information to the BRA." The OIG also stated that the "documents the appraiser provided to the BRA staff included none of the contextual information that would have been included in a written, USPAP-compliant Appraisal Report." As a result, the OIG argued that the BRA "proceeded without the appraiser's certified opinion about the highest and best use of the property, an explanation of how the appraiser arrived at that opinion, an explanation of the choice of valuation methodologies and why the chosen valuation method was better than other approaches." The OIG believed that "[w]ithout such an analysis, the BRA staff could not know that it was receiving the fair market value for the City's property…," the City's property being the licensure of the limited easement of Yawkey Way on game days.

The OIG stated that it was "unclear whether the BRA ever asked for the net-revenue information in order to properly estimate an income-based price for the transactions," and found "[t]o the contrary… the BRA relied on illogical comparisons to retail space figures for a typical Fenway or other Boston neighborhood business." The letter pointed out that there was no restriction in the grant of easement that limits the Red Sox use of Yawkey Way to just 120 days per year, which was the number of days that factored into the calculation of the Yawkey Way Easement's price.

With regard to the circumstances of the Board's vote, the OIG noted that there was nothing apparent from the Board's September 26, 2013 agenda or the Memorandum to suggest there was any evidence as to *how* taking the Yawkey Way Easement would prevent or eliminate blight. Further, there seemed to have been a sense of urgency to the vote that only permitted the Board members hours to review a complicated transaction. In sum, the OIG took issue with the BRA's decision to "ratify" the Demonstration Project, value the Yawkey Way Easement as it did, and then vote to extend the Master Agreement for as long as the Red Sox play at Fenway. But, in the final analysis, while there maybe criticism of the deal, this Court finds that the BRA acted within its authority to establish and execute Demonstration Projects.

Marchese's Claim vs. BRA

On May 3, 2013, before the BRA voted to confirm and ratify the terms of the Demonstration Project, Marchese contacted the BRA and expressed an interest in acquiring the rights to the Yawkey Way Easement that had been granted to the Red Sox under the 2003 LMI. Marchese proposed to the BRA a ten-year contract for $300,000 per year, of which $1.5 million would be paid upon execution of the agreement. Marchese stated that it was his intention to "lease spaces to vendors promoting the Boston experience...." The Yawkey Way easement has been used for more than just a vendors' showcase. It has also been integrated into the security plan for the park, All bags and purses are searched outside the park on the concourse as part of the security screening for the park. The BRA had not sought any public bids for the Yawkey Way Easement.

On July 17, 2013, Marchese wrote another letter to the BRA asking it to "follow the guidance and suggestions of the Inspector General, and put the [licensure of the Yawkey Way Easement] 'out to bid' in order to allow others to participate in a transparent, fair and competitive bid procedure." Marchese wrote several additional letters. The BRA was not bound by the OIG and decided not to solicit other bids on the Yawkey Way Easement, mindful that the Red Sox, as private land owners, owned the land in fee to the center of Yawkey Way (subject to the easement for the public way on Yawkey Way).[15] The Red Sox, in other words, owned the land immediately abutting the easement. This factor would impact the value of the easement in that access to the easement would almost certainly require the Red Sox consent to access their property.[16] And, the BRA acquired a portion of the public way easement (for a few hours on game days) and did not acquire any rights in the land owned by the Red Sox,

***9** Disappointed, Marchese filed the present action seeking certiorari review of the 2013 Order of Taking under G. L. c. 121B, § 47. Marchese challenged the BRA's taking of the Yawkey Way Easement and he also challenged the deal to transfer easement rights on Yawkey Way (on home game days and event days) to the Red Sox because he claimed it exceeded the scope of the BRA's authority because he claimed that Yawkey Way was not "blighted." Marchese also alleged that the Yawkey Way Easement should have been put out to bid pursuant to G. L. c. 30B. This court previously denied the BRA's motion to dismiss Marchese's complaint, and found, at that preliminary stage of the legal proceedings that Marchese had standing to challenge the 2013 Order of Taking and conveyance of the Yawkey Way Easement to the Red Sox.[17]

DISCUSSION

I. Certiorari Review of the 2013 Taking

A. The BRA's Eminent Domain Power

The BRA's exercise of its eminent domain power "is proper so long as the taking is for a public purpose" and made within the confines of its authority granted under Chapters 121A and 121B of the General Laws. See *Benevolent & Protective Order of Elks, Lodge No. 65* v. *Planning Bd. of Lawrence*, 403 Mass. 531, 536-539 (1988); see also *Mahajan* v. *Department of Envtl. Protect.* 464 Mass. 604, 606 (2013) (BRA is a redevelopment and urban renewal agency under G. L. c. 121B, §§ 4, 9 and acts "as the planning board for the city of Boston" under G. L. c. 121A). The BRA has considerable latitude in articulating a public purpose in support of its exercise of its eminent domain powers.

When considering whether a BRA eminent domain taking was for a proper public purpose, Massachusetts appellate courts generally look to those purposes articulated by the legislature, such as those set forth in the *Legislative Declaration of Necessity of Urban Renewal Projects* under G. L. c. 121B, § 45. See e.g., *Benevolent & Protective Order of Elks, Lodge No. 65*, 403 Mass. at 539-540 (citing G. L. c. 121B, § 45 in support of holding that "[t]aking for redevelopment an area which is a 'blighted open area'… is a public purpose"). Eliminating and "preventing recurrence" of "substandard," "decadent" or "blighted open areas" throughout the Commonwealth are among these purposes. See G. L. c. 121B, § 45. According to the legislature, such areas "constitute[] a serious and growing menace, injurious and inimical to the safety, health, morals and welfare of the residents of the commonwealth.... [and] an economic and social liability, [that] substantially impairs or arrests the sound growth of cities and towns, and retards the provision of housing accommodation ...." *Id.* See *Lowell* v. *Boston*, 322 Mass. 709, 735 (1948) ("The legislative declaration as to the public conditions which led up to the enactment of the statute and the purpose sought to be accomplished are entitled to great weight."); see also *An Act Relative To Urban Redevelopment*

Corporations, the Housing Authority Law, and the Clearing of Slums and Redevelopment Areas, St. 1953, c. 0647, § 18. Accordingly, a BRA taking by eminent domain has a proper public purpose if it was to eliminate or prevent the recurrence of "substandard," "decadent" or "blighted open areas" throughout the Commonwealth.[18]

***10** Turning to the BRA's statutory authorization, G. L. c. 121B, § 11(d) permits redevelopment authorities such as the BRA to take by eminent domain "any property, real or personal, or any interest therein, found by it to be necessary or reasonably required" to eliminate or prevent the recurrence of substandard, decadent, or blighted open areas, or to "carry out" any of Chapter 121B's sections, "and to sell, exchange, transfer, lease or assign the same ...."

Marchese nonetheless argues that Section 46(f) did not authorize the permanent taking of the Yawkey Way Easement because Section 46(f) does not provide any mechanism for public participation and oversight such as those required before the BRA can commence a formal urban renewal project under G. L. c. 121B, § 48. Marchese thus argues that BRA's interpretation of 46(f) would allow it, and other urban renewal agencies, to "take *any* property in the Commonwealth by eminent domain … transfer it to a new owner" and claim that it is a "demonstration" without detailing what is being demonstrated or how it cures or prevents urban blight." See *Plaintiff's Memorandum* at 8 (emphasis in original). This Court rejects that argument just as Justice Botsford rejected a similar argument in *Tremont* v. *Boston Redevelopment Auth.*, 2002 Mass. Super. LEXIS 564 at *37-*45 (2002). The court finds her analysis persuasive in this case as well:
Section 11 confers on the BRA the right to take property by eminent domain whenever it determines the taking is necessary to carry out the purpose of any section of the urban renewal statute, c. 121B. Section 46(f) is manifestly a section of c. 121B. It follows, therefore, that if the BRA finds a taking to be necessary "for the prevention and elimination of slums and urban blight" under § 46(f), such a taking has the requisite statutory basis in § 11(d), unless § 46(f) itself limits the BRA's ability to take property by eminent domain to situations where the taking is part of an approved "urban renewal project."

There is no such limitation, Section 46 sets out in eight separate subsections (§ 46(a) through (h)) a set of powers that the section deems additional to those granted in other parts of c. 121B. Included among these are the power "to prepare or cause to be prepared urban renewal plans, …"(§ 46(c)), and "to engage in urban renewal projects …" (§ 46(d)). Section 46(f), which gives the power "to carry out demonstrations for the prevention and elimination of slums and urban blight," contains no language that ties such demonstrations to urban renewal plans or projects....

Moreover, support for the view that the BRA does have statutory power to take property by eminent domain independent of an urban renewal plan or project comes from G. L.c. 121B, § 45, the section of the statute that declares the purpose of and necessity for urban renewal programs in general....

The necessity in the public interest for the provisions of this chapter relating to urban renewal projects is hereby declared as a matter of legislative determination. This section supplies an unquestionably broad description of purposes for which an urban renewal agency such as the BRA may exercise the power of eminent domain. While it mentions the need for redevelopment of land to be "in accordance with a comprehensive plan," the section nowhere defines mat "plan" as being limited to a formal "urban renewal plan" within the meaning of c. 121B, § 1, and more to the point, nowhere restricts an agency's power of eminent domain to taking property in conjunction with an approved "urban renewal plan." … Furthermore, the second paragraph of § 45 … relating to conservation and rehabilitation of blighted open areas or portions of such area, makes no reference to a "comprehensive plan" at all.

***11** (citation omitted).

For these reasons, the court finds that G. L. c. 121B, § 46(f) empowered the BRA to take the Yawkey Way Easement by eminent domain to carry out a demonstration project because it was to prevent or eliminate urban blight. There is no definition of urban blight in the statute. The BRA as specialist in the area of urban renewal are given some deference in making that determination and the court ought not substitute its judgement of what is blight or not. See *Boston Edison Co.* v. *Boston Redev. Auth.*, 374 Mass. 37, 70 (1977) (declining to substitute judgment for that of agency charged with making determination). The statute does not require any method for determining or quantifying blight.

What the record makes clear is that since at least the 1960s there was governmental interest, as expressed by the state legislature and governor, to explore opportunities to improve the athletic stadium for the Red Sox, whether by replacement or otherwise. The legislative acts supported the public means by which an athletic stadium would remain in Boston and could

therefore help prime the City's economic engine. The legislature saw it as part of a larger plan to renew the Fenway area. Looking at the Fenway area today, it may be difficult to imagine how different that area appeared in the 1960s, 1970s, 1980s, and 1990s and then compare those historical images with how that neighborhood had been transformed by 2013. The BRA is tasked with taking the long view on urban renewal. The sale of the Red Sox in 2002, and the new owners' willingness to renew, restore and improve the existing Fenway Park rather than building a new stadium, (likely in a in a new location) presented this opportunity to the BRA. The BRA's conduct is consistent with longstanding legislative plans and proposals to upgrade the park and its surrounding neighborhood.

In this case, the BRA took the Yawkey Way Easement by eminent domain to carry out a demonstration under G. L. c. 121B, § 46(f), which empowers the BRA to "develop, test and report methods and techniques and carry out demonstrations for the prevention and elimination of slums and urban blight[.]" See September 26, 2013 Order of Taking, AR 16. As previously noted, this Court will not substitute its judgment for the specialized knowledge and expertise of the BRA in identifying blight and areas that are to be subject to renewal. There is a legislative record to support the conclusion that the BRA's actions here were to prevent urban blight and continue the renewal and development of a vital economic neighborhood in the City. Therefore, the taking at issue in this case was within the BRA's statutory authority and for a proper public purpose as it was to eliminate or prevent blight as found by the BRA.

B. Scope of Judicial Review

"The decisions made by the BRA under G. L. c. 121B are legislative in nature.... [and] involve policy matters concerning the implementation of long-term development of areas of Boston considered to be in need of renewal." *St. Botolph Citizens Comm.* v. *Boston Redev. Auth.*, 429 Mass. 1, 12 (1999). "For this reason, G. L. c. 121B provides no explicit right of appeal in connection with the BRA's management of an urban renewal plan." *Id.* Nonetheless, the Supreme Judicial Court has held that the Superior Court has jurisdiction to review the BRA's determination that a taking satisfied statutory requirements and thus furthered a proper public purpose. See *Benevolent & Protective Order of Elks, Lodge No. 65*, 403 Mass. at 536-537. Such challenge, however, is limited to a narrow scope of review.

***12** Marchese's first challenge is to the September 26, 2013 Order of Taking. Although the taking of the Yawkey Way Easement was conducted under Chapter 121B, Marchese argues that the court should review the taking under the substantial evidence test applicable to BRA proceedings under G. L. c. 121A. See *Boston Edison Co.*,, 374 Mass. at 52 (broader scope of review applies to BRA proceedings under G. L. c. 121 A). In *Boston Edison Co.*, the Supreme Judicial Court found that due to "[t]he differences in the nature of the projects and the methods for approval between redevelopment plans under c. 121A and those under c. 121B … different treatment in terms of scope of review is appropriate ...." *Id.* The SJC held that a court reviewing proceedings conducted under G. L. c. 121A should apply the substantial evidence test because such proceedings are privately initiated and therefore did not involve a "large amount of participation by public agencies" or "tax benefits" to private entities. *Id.* at 53. In contrast, the court found that proceedings conducted under G. L. c. 121B could be reviewed under the narrower arbitrary and capricious standard of review because such projects generally involve an urban renewal plan that "must be approved by the city council and an independent State agency...."[19] *Id.*

Here, Marchese argues that because the taking of the Yawkey Way Easement was not publicly reviewed or conducted pursuant to a Chapter 121B urban renewal plan it was akin to a proceeding under Chapter 121A and requires a more rigorous review. The court does not agree. Although demonstrations carried out under G. L. c. 121B, § 46(f) are not subject to the public review requirements the SJC discussed in *Boston Edison*, the legislature has repeatedly recognized, since at least the 1960s and culminating with the 2000 Act, that expanding the capacity of Fenway Park should be a priority for the City. Therefore, although the Yawkey Way Easement was not taken pursuant to a formal urban renewal plan, it nonetheless furthered an articulated legislative priority. Compare *Opinion of the Justices*, 356 Mass. at 796 (if stadium subsidized by taxpayers "can be operated … so as in effect to subsidize private organizations operated for profit, then the facilities could not be said to exist for a public purpose" despite legislative declarations to the contrary). Moreover, unlike proceedings under G. L c. 121A, the BRA did not take the Yawkey Way Easement its capacity as a "planning board" for the City or confer any tax benefits on private entities in connection with the taking. Compare *Boston Edison Co.*, 374 Mass. at 52. For these reasons, the court will review whether the BRA's determination that the taking of the Yawkey Way Easement was for the elimination and prevention of blight under the arbitrary and capricious standard of review applicable to proceedings under Chapter 121B.

Further, at this stage in the case, the reverse its position and instead concludes as for the BRA taking of the limited game day easement on Yawkey Way,, Marchese lacks legal standing to challenge the BRA's decision to exercise its eminent domain powers to take the easement rights from the City. This is so because: "[a] party has standing when it can allege any injury within the area of concern of the statute or regulatory scheme under which the injurious action has occurred." *Benevolent & Protective Order of Elks, Lodge No. 65*, 403 Mass. at 542 (quotation omitted). In general, landowners or tenants within a project area are "'within the area of concern' of the statutory requirements which relate to the eligibility of the project area for urban renewal," and thus have standing to challenge a BRA action taken under G. L. c. 121B. *Id.* at 546. Here, however, Marchese is not a landowner or tenant within the demonstration area. Alternatively, standing could be conferred, as the SJC has found when "[a]ny person [is] aggrieved" by a BRA action and they may then seek judicial review. See *Boston Edison Co.*, 374 Mass. at 45. A person is "aggrieved" if the BRA action will cause them to suffer an injury that is "direct, substantial, and ascertainable." *Id.* at 46. In *Boston Edison*, the SJC conferred standing on the plaintiffs where the subject BRA action would result in "the elimination of a group of consumers" from the market available to the plaintiff. *Id.* at 44. Here, Marchese cannot show that consumers on Yawkey Way were a market available specifically to him. He was not in business at that location at the time of the taking and did not lose any existing consumers. He perhaps hoped to develop a new commercial market with new consumers if he were to be successful but that would also be true to the public at large. Applying the plaintiffs definition of aggrieved in that sense then everyone who is not the Red Sox could be seen as an "aggrieved" person. Surely this proves too much.

***13** Moreover, as explained below, Marchese's ability to access the easement, even if he could be the successful bidder for the easement rights, would also depend on the Red Sox, as the property owner, giving him consent to access their property abutting the easement. Absent evidence that Red Sox would have granted Marchese such approval and because he had no existing market before the BRA taking, his status remained unchanged by the BRA taking. The taking of the easement did not uniquely injure Marchese. Therefore, Marchese cannot show that the BRA's eminent domain taking of the Yawkey Way Easement for the purpose of conveying it to the Red Sox eliminated a group of consumers that had previously been available to him and so he lacks standing as a person "aggrieved" by the BRA taking.

C. Analysis

Arbitrary and Capricious

"A decision is not arbitrary or capricious unless there is no ground which 'reasonable [people] might deem proper' to support it." *Teamsters Joint Council No. 10* v. *Director of the Dept. of Labor & Workforce Develop.*, 447 Mass. 100, 107 (2006), quoting *Cotter* v. *Chelsea*, 329 Mass. 314, 318 (1952). "This standard is highly deferential to an agency and requires according due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it." *Ten Local Citizen Group* v. *New England Wind, LLC*, 457 Mass. 222, 228 (2010) (quotation omitted). As the challenging party, Marchese carries the burden of persuasion.

Definition of "Urban Blight"

As an initial matter, the court must define the undefined term "urban blight" as that term is used in G. L. c. 121B, § 46(f), The provision now codified as G. L. c. 121B, § 46(f) (formerly G. L. c. 121, § 26AAA) originated in 1955 when the General Court passed *An Act Relative to Urban Renewal Projects* in the wake of the National Housing Act ("NHA") of 1954,[20] which constituted an expansion of the Federal Government's efforts to aid in the "elimination and prevention of slums," and introduced the concept of urban renewal. St. 1955, c. 654. See Mass. House Rep. 7839, August 2, 1954. Section 314 of the NHA authorized the Federal Housing and Home Finance Administrator "to make grants, subject to such conditions as he shall prescribe, to public bodies, including cities and other political subdivisions to assist them in developing testing and reporting methods and techniques, and *carrying out demonstrations* and other activities for the prevention and the elimination of slums and urban blight."[21] (Emphasis added). At that time, the NHA defined a "blighted area" as "any area where

dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these facts, are detrimental to safety, health or morals." *National Housing Act Amendments of 1938*, c. 13, § 3, 52 Stat. 16 (presently codified at 12 U.S.C. § 1713(a)(5)).

Section 46(f) closely tracks the language of Section 314 of the NHA.[22] By enacting section 46(f), the legislature allowed redevelopment authorities such as the BRA to take advantage of NHA demonstration grants.[23] The legislature did not, however, incorporate the NHA's definition of a "blighted area" into the legislation that is presently codified as Chapter 121B, or otherwise define the term "urban blight," Chapter 121B does, however, define the term "blighted *open* area" as a "predominantly open area which is detrimental to the safety, health, morals, welfare or sound growth of a community because it is unduly costly to develop … through the ordinary operations of private enterprise ...." G. L. c. 121B, § 1. Considering the statutory definition of a "blighted open area" in light of the legislative history of Section 46(f), and definition of "blighted area" set forth in the NHA, the term "urban blight" can reasonably be understood to refer to an area that is "detrimental to the safety, health, morals, welfare or sound growth of a community because it is unduly costly to develop … through the ordinary operations of private enterprise."[24]

Marchese's Petition for Review

***14** As explained, the court's analysis is limited to whether there was "no ground which reasonable people might deem proper to support" the BRA's determination that the taking of the Yawkey Way Easement would eliminate or prevent urban blight, i.e., conditions "detrimental to the safety, health, morals, welfare or sound growth of a community." See G. L. c. 121B, § 1; *Teamsters Joint Council No. 10*, 447 Mass. at 107 (quotation and alteration omitted),

Marchese's principal argument is that "there is no urban blight on Yawkey Way, neither existing nor looming, threatened nor prospective." See *Plaintiff's Mem.* at 4. In support, Marchese points to dicta in the court's decision on the BRA's motion to dismiss, which stated that "no rational review of the facts shows that the parcel comprising the Yawkey Easement, as of September 26, 2013, was detrimental to the community's safety, health, morals, welfare, or growth." See *Memorandum of Decision and Order on Defendant Boston Redevelopment Authority's Motion to Dismiss* at 9 n.8. Marchese's reliance on the court's decision is misplaced.

The dictum cited by Marchese is not binding for purposes of the present analysis, that was at the Motion to Dismiss stage and now the parties have presented a more comprehensive understanding of the applicable statutory scheme for the court to review. Moreover, the court's order on the BRA's motion to dismiss did not reach the merits of Marchese's request for judicial review.[25]

Marchese also relies on the OIG's finding that the BRA did not articulate how taking the Yawkey Way Easement would prevent or eliminate urban blight. However, to some extent, Marchese's and the OIG's emphasis on evidence of "blight or threatened blight" miss the point. The BRA need not limit its consideration to only evidence of *impending* blight in order to determine that certain actions would prevent conditions detrimental to the safety, health, morals, welfare or sound growth of a community from developing. The on-going renewal of a neighborhood may also be a valid consideration.

Here, the BRA had evidence before it that during the ten-year period that the 2003 LMI was in place, over $2.2 billion of private funds had been invested in residential and commercial development in the neighborhood surrounding Yawkey Way. The BRA reasonably concluded that ratifying and confirming the improvements made under the 2003 LMI and 2003 Order of Taking, and thereby conveying the Yawkey Way Easement to the Red Sox indefinitely, the economic benefit that the improvements had already conferred on the surrounding neighborhood would be preserved. See *Boston Edison Co.*, 373 Mass. at 78 ("If there is any room for the exercise of discretion the judgment of the board must prevail.") (quotation omitted). The preservation of these benefits in turn prevented conditions detrimental to the safety, health, morals, welfare or sound growth of a community from developing in the area surrounding Yawkey Way. See G. L. c. 121B, § 45 (declaring that preventing the recurrence of substandard conditions "or their development" is a public purpose).

Despite Marchese's argument to the contrary, this is not a situation where the BRA relied on a determination of blight "made some years earlier" and did not have the benefit of data concerning the present characteristics of the neighborhood before

making a determination. See *Boston Edison Co.*, 374 Mass. at 60. Rather, the BRA compared data about the neighborhood before the 2003 Order of Taking to data about the neighborhood ten years later and reasonably concluded that it had done more to improve the condition of the neighborhood than "the ordinary operations of private enterprise" had accomplished before 2003. See *Benevolent & Protective Order of Elks, Lodge No. 65*, 403 Mass. at 542 (eminent domain taking proper in light of evidence "concerning the history of the project area and its development [which] support[ed] a conclusion that the ordinary operations of private enterprise were not remedying the deteriorated and unused condition of a preponderance of the project area").

***15** The legislature has given the BRA the "power to make necessary findings" in circumstances such as those now under review. See *Boston Edison Co.*, 374 Mass, at 78. The BRA's findings "are not to be. retried in our courts." *Id.* (quotation omitted). For the foregoing reasons, Marchese has failed to meet his burden to show that there was "no ground which 'reasonable [people] might deem proper"' to support the BRA's decision that the 2013 Order of Taking would prevent blight. *Teamsters Joint Council No. 10*, 447 Mass. at 107.

II. Uniform Procurement Act

The Uniform Procurement Act ("UPA"), G. L. c. 30B requires "governmental bodies" to solicit bids for "every contract for the procurement of supplies, services or real property and for disposing of supplies or real property ...." G. L. c. 30B, § 1. The court, after review of the record on the cross motions for Judgment on the Pleadings, now concludes that the acquisition of the Yawkey Easement is exempt from the requirements of G.L. c. 30B. G.L.c. 30B §1(b)(25).[26] Marchese's contention that the UPA applied to the BRA's conveyance of the Yawkey Way Easement is rejected. It fails to take into account the unique nature of the interest conveyed.

Upon executing the 2013 Order of Taking, the BRA took by eminent domain the exclusive right to use a public easement for a limited and specific times and on specific days.[27] The Red Sox nonetheless retained their fee interest in the land upon which the Yawkey Way Easement sits and their right as an abutter to deny prospective vendors the right to access their property thereby impeding a third party's ability to operate a business on Yawkey Way. See *Loosian* v. *Goudreault*, 335 Mass. 253, 256 (1957), quoting *Opinion of the Justices*, 297 Mass. 559, 564 (1937) ("The rights of those owning land abutting upon [public ways], and having title to the fee in land subject to the easement of public travel acquired by the laying out of highways, are established and are carefully guarded.") ("Whatever cannot be justified as incidental to travel is a violation of the rights of the abutting landowner in the ordinary case where he owns the fee of the public way...."); *Boston* v. *A.W. Perry, Inc.*, 304 Mass. 18, 20 (1939) ("It has always been held with respect to land included within the limits of [a] public way to be clear that the public have no other right, but that of passing and repassing; and that the title to the land, and all the profits to be derived from it, consistently with, and subject to, the right of way, remain in the owner of the soil.") (citation omitted); see generally *McIntyre* v. *Boston Redev. Auth.*, 33 Mass. App. Ct. 901 (1992) (in absence of evidence that fee owner's use of land was inconsistent with right of public construction of pedestrian mall on land fee owner controlled over which there was a public easement was proper). Compare *Boy Scouts of Am., Cape Cod & Islands Council, Inc.* v. *Yarmouth*, 32 Mass. App. Ct. 713, 718 (1992) (where county take land in fee by eminent domain, landowner's ownership interest in underlying property is extinguished and county is vested with complete title). Cf. G. L. c. 140, § 50 (licensing authorities not permitted to grant license to food truck vendors "to use any part of a highway the fee in which is not owned by the town unless the owners of the land abutting on that way part of the way consent in writing to the granting of the license."); *Sullivan* v. *Police Comm'r of Boston*, 304 Mass. 113, 116 (1939) (holding that the legislature could properly find that by reserving a taxi stand on a private way "for the exclusive use of the taxicab owner selected by the proprietor of the abutting premises … the public would be well served"); *Lambert* v. *Collins*, 16 L.C.R. 7 at *8 (Mass. Land. Ct. 2008) (municipality owns "roadway layout" and "[i]ts inherent police owners grant it the power to make judgments" related thereto "in the interest of public safety and convenience .... It has no obligation to maximize the value of the properties along its roadway s in making those judgments"). Therefore, unlike the typical situation where a governmental body solicits bids to dispose of commercial real estate with fewer (and more typical) restrictions on its alienability, the BRA did not possess, and therefore could not solicit bids for the exclusive right to control/use the Yawkey Way Easement during licensed events at Fenway Park. For these reasons, the court finds that the UPA is inapplicable to the Yawkey Way Easement because it could not be marketed to bidders other than the Red Sox.

ORDER

16** For the foregoing reasons, Marchese's Motion for Judgment on the Pleadings is ***DENIED and the BRA's Motion for Judgment on the Pleadings is ***ALLOWED***.

<<signature>>

Rosemary Connolly

Justice of the Superior Court

Dated: December 13, 2017

Footnotes

1 Until 1977, what is now Yawkey Way was part of Jersey Street.. Jersey Street was created as a public way on July 15, 1898 under the authority of St. 1891, c. 323, entitled *An Act Relating to the Location, Laying Out and Construction of Highways in the City of Boston.* See *An Act to Extend the Time for Filing Petitions for the Assessment of Damages Accruing from the Laying Out and Construction of Jersey Street in the City of Boston*, 1905 Mass. House Bill 0170; *A Record of the Streets, Alleys, Places, Etc. in the City of Boston,* compiled under the direction of the Street Commissioners and printed by the order of City Council at 1, 261 (1910) (stating that Jersey Street was a pubiic highway "in the opinion of the Street Commissioners"); *Edwards* v. *Bruorton*, 184 Mass. 529, 529-530 (1904). See also *Schaer* v. *Brandeis Univ.*, 432 Mass. 474, 477 (2000) (court may take notice of "matters of public record"); *Commonwealth* v. *Greco*, 76 Mass. App. Ct. 296, 301 (2010) (matters of common knowledge and facts that "are indisputably true" subject to judicial notice).

2 The 2000 Act defined the "ballpark development area" as "the area within the city of Boston bounded and described as follows: beginning at the intersection of the centerline of Brookline avenue and the centerline of Boylston street, thence easterly following the centerline of Boylston street to the intersection with the centerline of Ipswich street, then northerly and easterly along the centerline of Ipswich street to the intersection with the centerline of Landsdowne [sic] street, then westerly along the centerline of Landsdowne [sic] street to the intersection with the centerline of Brookline avenue, then southwesterly along the centerline of Brookline avenue to the point of beginning. St. 2000, c. 208, § 3(a).

3 The 2000 Act also prohibited the city of Boston from acquiring any land within the proposed ballpark development area before preparing an economic development plan and receiving the approval of the Boston City Council and Mayor. Among other things, the economic development plan was required to encompass an agreement between the city of Boston and the ballpark developer to share a portion of the net income generated from a proposed parking facility and a provision that required the ballpark developer to pay "as consideration for the lease of the ballpark site a sum equal to the total debt service incurred by the city ...." See St. 2000, c. 208, §§ 4(d), 6(a).

4 Unless otherwise indicated, references to the "Red Sox" hereinafter refer to the team's owners.

5 The proposal also sought permission to rehabilitate and expand Fenway Park's bleacher and right field concourse areas in order to increase the number of restrooms and concessions stands available to patrons, and allow Aramark, the Red Sox's concessionaire, "to better prepare quality foods."

6 "The Fenway Planning Task Force (FPTF), appointed by Mayor Thomas Menino, was a group of community, business and institutional representatives that lay down the foundation for issuing new and permanent zoning in the Fenway neighborhood." *Fenway Planning and Rezoning*, Boston Planning & Development Agency, http://www.bostonplans.org/planning/planning-initiatives/fenway-planning-and-rezoning (last visited December 5, 2017).

7 The improvements are referred to hereinafter, collectively, as the "Demonstration Project."

8 The 2003 Order of Taking was recorded on February 12, 2003. The last Red Sox game day of the tenth calendar year from that date was October 30, 2013.

9 The 2003 LMI defined the "Consumer Price Index" as "the Consumer Price Index for Urban Wage Earners and Clerical Workers, all items … for Boston Massachusetts published by the United States Bureau of Labor Statistics."

10 The OIG is responsible for "prevent[ing] and detect[ing] fraud, waste and abuse in the expenditure of public funds, whether state, federal, or local, or relating to programs and operations involving the procurement of any supplies, services, or construction ...." G. L. c. 12A, § 7. The BRA is not bound by the OIG's recommendations. See G. L. c. 12A, § 8.

11 The Board member who eventually voted against the ratification and confirmation of the Demonstration Project began asking BRA staff for a memorandum on the issue four days earlier, on September 22, 2013.

12 Therefore, if the Red Sox leave Fenway Park and are not replaced with another MLB team, the Yawkey Way Easement rights revert back to the BRA.

13 The Massachusetts Appeals Court has explained the use of capitalization rates in real estate valuation as follows:
Massachusetts decisional law recognizes both capitalization of income and comparable sales studies as valid methods of real estate valuation....
Capitalization of income measures the value of property on the basis of its income-earning capacity. It typically employs two components: (1) the net income of the property (gross rental income minus operating expenses); and (2) a capitalization rate percentage representing the return necessary to attract investment capital. Division of the net operating income by the capitalization rate yields the proposed value of the property. Specific appraisals or assessments may add refinements to the basic computation, *Black Rock Golf Club, LLC v. Board of Assessors of Hingham*, 81 Mass. App. Ct. 408, 410 n.5 (2012) (citation omitted).

14 Subsequently, the OIG has also recommended that the BRA develop regulations for the approval of demonstration projects.

15 See *Boston* v. *A.W. Perry, Inc.*, 304 Mass. 18, 20 (1939) ("It has always been held with respect to land included within the limits of [a] public way to be clear that the public have no other right, but that of passing and repassing; and that the title to the land, and all the profits to be derived from it, consistently with, and subject to, the right of way, remain in the owner of the soil.") (citation omitted).

16 See *Boston*, 304 Mass. at 20 ("[T]he rights of those who have title to the fee subject to [a] public easement are carefully guarded ...."); *In re Opinion of the Justices*, 297 Mass. 559, 562 (1937) ("Whatever is done within the limits of the highway by the public or by members of it not justifiable as incidental to travel is a violation of the rights of the abutting owner.").

17 At that time in the proceedings, it was reasoned that Marchese was a "person aggrieved" because the BRA had deprived Marchese and any other potential bidder of the opportunity to bid on the Yawkey Way Easement by ratifying and confirming the terms of the 2003 LMI. On December 14, 2016, the court (Giles, J.) denied Marchese's motion to file a first amended complaint adding claims for judicial review of the 2013 transactions between the BRA and the Red Sox, monetary damages, and violation of G. L. c. 93A. The court reasoned that Marchese's attempt to challenge the 2013 agreement was "pointless" because if the court ultimately determined that the taking was a proper exercise of the BRA's statutory authority, G. L. c. 30B, § 1 (b)(25) specifically exempted the easement rights in question from public bidding. The court added that if it ultimately found the taking was improper, then it would be annulled, and the easement rights would revert back to the City.

18 But see *Opinion of the Justices*, 332 Mass. 769, 783-784 (1955) (bill to acquire land with public funds to prevent blight was not a public purpose where "it seem[ed] plain that the primary design of the bill [was] to provide for the acquisition of the area by the use… of substantial sums of public money and later of comparatively small sums, to formulate a plan for development, including the devoting of some portions of the area to truly public uses, and the return of the remainder to private ownership … with the expectation that adjacent areas and the city as a whole will benefit through the increase of taxable property and of values").

19 General Laws c. 121B, § 48 provides that "[n]o urban renewal project shall be undertaken until (1) a public hearing relating to the urban renewal plan for such project has been held alter due notice before the city council of a city or the municipal officers of a town and (2) the urban renewal plan therefor has been approved by the municipal officers and the department as provided in this section."

20 Pub. L. 83-560, 68 Stat. 590 (1954) (codified as amended at 12 U.S.C. §§ 1701 et. seq.).

21 NHA demonstration grants were designed to "assist communities and other public agencies to develop solutions to the various problems raised by urban-renewal requirements though special studies and experimental activities carried out by non-federal governmental units." Special Commission on Audit of State Needs, *Massachusetts Needs in Urban and Industrial Renewal*, Mass. House Rep, No. 3373 at 96 (1960) (hereinafter, "House Rep. No. 3373").

22 Marchese correctly points out that unlike the NHA, Section 46(f) does not include the language "and other activities."

23 In I960, the Special Commission on Audit of State Needs produced a report in connection with executive and legislative requests to undertake an assessment of Massachusetts' urban renewal needs. See *Letter of Transmittal*, House Rep. No. 3373. Although the NHA made demonstration grants available several years before the report was issued, the Commission found that the Commonwealth had largely failed to take advantage of the demonstration grant program and recommended that Massachusetts utilize the program to facilitate "a flow of in formation and fresh approaches to the solution of urban renewal problems ...." House Rep. No. 3373 at 97. Among other things, the Commission recommended the use of demonstration grants to conduct a state-wide housing inventory, review problems of code enforcement related to conservation and rehabilitation programs, investigate the need for legislation authorizing an urban renewal "land bank," and carry out studies regarding difficulties faced by small business dislocated by urban renewal programs. *Id.* at 122-123.

24 In *Tremont*, Justice Botsford settled on the same definition, albeit by taking a different route, finding that the terms "urban blight," "blighted open area," and "decadent area":

> should be given their common sense meanings, and that they need to be read in conjunction with the related statutory definitions "to produce an internal consistency." … The word "blight" is defined to mean in relevant part "something that impairs growth, withers hopes and ambitions, or impedes progress and prosperity." The American Heritage Dictionary of the English Language (3d ed. 1992). In the statutory context in which "urban blight" occurs, and drawing on the two statutorily defined terms cited above [(blighted open area and decadent area)], "urban blight" reasonably can be understood to refer generally to a condition in a portion of the city that is "detrimental to the safety, health, morals, welfare or sound growth of a community," is caused by one of a number of factors including the physical deterioration of facilities and buildings in the area, and that is not being alleviated or remedied "by the ordinary operations of private enterprise."

2002 Mass. Super. LEXIS 565 at *54-*56 (citation omitted).

25 A judge has the power to reconsider "an issue or a question of fact or law" that has already been decided "until final judgment or decree." *Commonwealth* v. *Charles*, 466 Mass. 63, 83-84 (2013).

26 The foregoing discussion of the legislative and BRA acts with respect to the development of the park and surrounding neighborhood constitute a valid plan if such a plan could be required for a demonstration project.

27 Although it does not bear on the issues raised here, the significant body of mostly early twentieth century ease law holding that cities cannot interfere with the use of a public easement over a public way without express legislative authorization seems apropos. See e.g., *Boston* v. *A.W. Perry, Inc.*, 304 Mass. 18, 21 (1939) (Legislature "is the supreme authority in regard to public rights in the streets and highway" and can only be regulated by municipalities within the bounds of authority that has been conferred by statute) (citation omitted); *Lexington* v. *Suburban Land Co.*, 235 Mass. 108, (1920) (the right to erect structures such as telephone poles and plant trees along public ways is subject to legislative authorization); *Cape Cod S.S. Co.* v. *Selectmen of Provincetown*, 295 Mass, 65, 67 (1936) ("The town could no more grant the exclusive use of any part of it needed by the public for the purposes of a landing to particular persons or corporations in derogation of the equal rights of the rest of the public than it could grant to individuals the exclusive right to travel over portions of its town ways."); *Cheney v. Barker*, 198 Mass. 356, 363 (1908) ("Our roads or public ways are established for the common good and for the use and benefit of all the inhabitants of the Commonwealth .... The mere fact that the burden of their construction and maintenance has to a large extent been put upon the cities and towns in which they are situated gives to those cities or towns … no peculiar privileges in such ways.") (citation omitted); *Browne v. Turner*, 176 Mass. 9, 15 (1900) (city could only set price and duration of tease of public way according to terms prescribed by the legislature); see also *Lowell* v. *Boston*, 322 Mass. 709, 736 (1948) (city maintains public lands as representative of the public, which is in turn represented by the legislature, and therefore could only lease public land "for not more than the maximum term or less than the minimum rental designated by statute"). The SJC recently affirmed the basic principles underlying these cases in *Smith* v. *Westfield*, 478 Mass. 49, 59-60 (2017), holding that where the "general public has obtained an interest in land such as an easement, those rights are "subject to the paramount authority of the General Court which may limit, suspend or terminate the easement."

End of Document

Tremont v. Boston Redevelopement Auth.

Superior Court of Massachusetts, At Suffolk

September 23, 2002, Decided

Opinion No.: 89482, Docket Number 01-2705

Reporter
2002 Mass. Super. LEXIS 564 *

Tremont on the Common Condominium Trust v. Boston Redevelopement Authority et al.

Core Terms

Opera, Street, theaters, notice, demonstration project, urban renewal, Redevelopment, eminent domain, Cultural, urban blight, Historic, voted, take property, summary judgment, restoration, renovation, designation, damages, powers, amended complaint, demonstrations, conditions, revitalize, charrette, blighted, projects, purposes, Zoning, public purpose, open area

Case Summary

Procedural Posture

Defendant Boston, Massachusetts, Redevelopment Authority and defendant intervenor developer moved for partial summary judgment on all counts of plaintiff condominium building's complaint challenging the validity of the authority's exercise of its eminent domain powers in taking and vacating a street abutting the building. Their primary arguments were that the authority exceeded its powers under Mass. Gen. Laws ch. 121B, §§ 11, 46(f).

Overview

Boston's historic opera house had been vacant for 15 years and was fast deteriorating beyond repair while disputes continued as to how to save and restore it. The authority finally had an opportunity to work with a private developer on a suitable project and designated that arrangement as a demonstration project under § 46(f). The restoration would require enlargement of the facility, and to this end, the authority sought to acquire and vacate the street that provided residents access to the building. The court held that under the plain language of § 46(f), such a condemnation did not require prior adoption of a formal urban renewal plan. Demonstration projects, such as one involving private-public cooperation, were expected to be different each from the other. The record contained substantial evidence as to the opera house's dire straits, and the taking was clearly for a public purpose, with no showing of bad faith. The claim that the building had no notice of the plain was meritless, and the claim that the action was arbitrary and capricious was untimely.

Outcome
The court granted the motions of the authority and the developer.

LexisNexis® Headnotes

Governments > Legislation > Statute of Limitations > Time Limitations

Real Property Law > Eminent Domain Proceedings > General Overview

HN1[] **Statute of Limitations, Time Limitations**

A property owner may bring a challenge to the validity of an eminent domain taking within three years of the taking. Mass. Gen. Laws ch. 79, §§ 16, 18.

Administrative Law > Judicial Review > Reviewability > Preclusion

Governments > Public Improvements > Community Redevelopment

Real Property Law > Eminent Domain Proceedings > General Overview

HN2[] Reviewability, Preclusion

Judicial review of the Boston, Massachusetts, Redevelopment Authority's actions in its capacity as an urban renewal agency is not generally available. Under Mass Gen. Laws ch. 121B, § 47, an aggrieved person may obtain judicial review of an eminent domain taking by an urban renewal agency, but the statute expressly limits the judicial review to an action in the nature of certiorari that must be brought within 30 days after the challenged taking.

Administrative Law > Judicial Review > Reviewability > General Overview

Real Property Law > Eminent Domain Proceedings > General Overview

HN3[] Judicial Review, Reviewability

In circumstances involving eminent domain takings, the Supreme Judicial Court of Massachusetts has permitted a party whose property is taken to obtain judicial review even absent an express right of appeal in the statute.

Governments > Public Improvements > Community Redevelopment

Real Property Law > Eminent Domain Proceedings > General Overview

HN4[] Public Improvements, Community Redevelopment

See Mass. Gen. Laws ch. 121B, § 46(f).

Governments > Public Improvements > Community Redevelopment

Real Property Law > Eminent Domain Proceedings > General Overview

HN5[] Public Improvements, Community Redevelopment

See Mass. Gen. Laws ch. 121B, § 11(d).

Governments > Legislation > Interpretation

HN6[] Legislation, Interpretation

Where the meaning of statutory language is clear, the statute should be construed in accordance with that meaning.

Governments > Public Improvements > Community Redevelopment

Real Property Law > Eminent Domain Proceedings > General Overview

HN7[] Public Improvements, Community Redevelopment

The term "operating agency" is defined to mean a housing authority or redevelopment authority. Mass. Gen. Laws ch. 121B, § 1.

Governments > Public Improvements > Community Redevelopment

HN8[] Public Improvements, Community Redevelopment

Mass. Gen. Laws ch. 121B, § 46 sets out in eight separate subsections a set of powers that the section deems additional to those granted in other parts of ch. 121B. Included among these are the powers to prepare or cause to be prepared urban renewal plans, at § 46(c), and to engage in urban renewal projects, at § 46(d). Section 46(f), which gives the power to carry out demonstrations for the prevention and elimination of slums and urban blight, contains no language that ties such demonstrations to urban renewal plans or projects.

Governments > Public Improvements > Community Redevelopment

Real Property Law > Eminent Domain Proceedings > General Overview

HN9[] Public Improvements, Community Redevelopment

See Mass. Gen. Laws ch. 121B, § 45.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

HN10 **Fundamental Rights, Eminent Domain & Takings**

Exercising the power of eminent domain is improper unless the taking is for a public purpose.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Governments > Public Improvements > Community Redevelopment

Real Property Law > Eminent Domain Proceedings > General Overview

HN11 **Fundamental Rights, Eminent Domain & Takings**

Under Mass. Gen. Laws ch. 121B, § 45, both (1) the acquisition of property for the purpose of eliminating decadent, substandard or blighted open conditions thereon and preventing recurrence of such conditions in the area, and (2) site improvement and the disposition of property for redevelopment incidental to the foregoing are among the public purposes and uses for which the power of eminent domain may be exercised. The same holds true of the conservation and rehabilitation of decadent, substandard, and blighted open areas, or portions of them, described in the second paragraph of § 45.

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

HN12 **Standards of Review, Substantial Evidence**

The substantial evidence test is commonly understood to require that agency findings must rest upon such evidence as a reasonable mind might accept as adequate to support a conclusion. Review under the standard entails scrutiny of the whole record to determine whether substantial evidence exists.

Governments > Legislation > Interpretation

HN13 **Legislation, Interpretation**

Statutory terms generally should be given their common sense meanings, and they need to be read in conjunction with related statutory definitions to produce an internal consistency.

Governments > Public Improvements > Community Redevelopment

HN14 **Public Improvements, Community Redevelopment**

For purposes of urban redevelopment law, the word "blight" is defined to mean something that impairs growth, withers hopes and ambitions, or impedes progress and prosperity. In the context of Mass. Gen. Laws ch. 121B, "urban blight" reasonably can be understood to refer generally to a condition in a portion of a city that is detrimental to the safety, health, morals, welfare, or sound growth of a community, is caused by one of a number of factors including the physical deterioration of facilities and buildings in the area, and that is not being alleviated or remedied by the ordinary operations of private enterprise.

Governments > Public Improvements > Community Redevelopment

HN15 **Public Improvements, Community Redevelopment**

The term "decadent area" is defined in Mass. Gen. Laws ch. 121B, § 1 to mean an area that is detrimental to safety, health, morals, welfare or sound growth of a community because of the existence of buildings which are out of repair, physically deteriorated, or obsolete, or in need of major maintenance or repair, or because of excessive land coverage or because of diversity of ownership, irregular lot sizes or obsolete street patterns make it improbable that the area will be redeveloped by the ordinary operations of private enterprise, or by reason of any combination of the foregoing conditions.

Administrative Law > Separation of Powers > Legislative Controls > General Overview

Governments > Legislation > Interpretation

Administrative Law > Judicial Review > Standards of Review > General Overview

HN16 **Separation of Powers, Legislative Controls**

As to interpretation of statutes governing an agency, courts defer to the agency's interpretation and application of the statute within which it operates.

Real Property Law > Eminent Domain Proceedings > General Overview

HN17 **Real Property Law, Eminent Domain Proceedings**

An eminent domain taking made solely to benefit a private person or interest is subject to challenge on grounds of bad faith. Massachusetts courts have identified primarily two factors that may indicate a taking was made in bad faith--to benefit private parties or for some other illegitimate purpose: (1) the agency taking the party did not follow its usual practices in doing so, and (2) the agency or public body on whose behalf the taking was made had never considered using the property for the purpose stated in the taking.

Governments > Public Improvements > Community Redevelopment

Real Property Law > Eminent Domain Proceedings > General Overview

HN18 **Public Improvements, Community Redevelopment**

The Boston, Massachusetts, Redevelopment Authority has broad discretion under Mass. Gen. Laws chs. 121B and 121A to deal with projects and programs of urban redevelopment. That it chooses in some cases to proceed under one available and permissible statutory provision while in a greater number of cases it acts under another provision, without more, is immaterial to the question whether it has acted in bad faith. The point of focus in considering whether a public agency has failed to follow usual practices is not the particular statutory authority under which the agency chooses to act under in making the taking, but the practices or procedures it follows in deciding to make the taking.

Real Property Law > Eminent Domain Proceedings > General Overview

HN19 **Real Property Law, Eminent Domain Proceedings**

A taking may be valid even if a private developer receives benefits from the taking, so long as the predominant purpose of the taking is a public one.

Real Property Law > Eminent Domain Proceedings > General Overview

HN20 **Real Property Law, Eminent Domain Proceedings**

See *Mass. Gen. Laws ch. 79, § 5C*.

Real Property Law > Eminent Domain Proceedings > General Overview

HN21 **Real Property Law, Eminent Domain Proceedings**

While *Mass. Gen. Laws ch. 79, § 5C* requires notice to property owners, it does not specify what type of notice, and also does not provide that an absence of notice invalidates a taking.

Real Property Law > Eminent Domain Proceedings > General Overview

HN22 **Real Property Law, Eminent Domain Proceedings**

See *Mass. Gen. Laws ch. 79, § 7C*.

Real Property Law > Eminent Domain Proceedings > General Overview

HN23 **Real Property Law, Eminent Domain Proceedings**

Massachusetts case law makes clear that the purpose of the statutory notice of *Mass. Gen. Laws ch. 79, § 7C* is to ensure that property owners learn of a taking so that they may exercise their right to compensation for the value of the property so taken within the statutory time allotted.

Administrative Law > Judicial Review > Reviewability > General Overview

HN24[] **Judicial Review, Reviewability**

Mass. Gen. Laws ch. 249, § 4 provides that actions in the nature of certiorari to correct errors in proceedings which are not according to the course of the common law, which proceedings are not otherwise reviewable by motion or by appeal are to be commenced within 60 days next after the proceeding complained of.

Judges: **[*1]** Margot Botsford Justice of the Superior Court.

Opinion by: Margot Botsford

Opinion

MEMORANDUM OF DECISION AND ORDER ON MOTIONS FOR PARTIAL SUMMARY JUDGMENT

The plaintiff Tremont on the Common Condominium Trust (TOC) brings this action to challenge the validity of actions taken by the defendant Boston Redevelopment Authority (BRA) in connection with the Boston Opera House renovation project (sometimes referred to hereafter as "Opera House project") in downtown Boston. The defendant-intervener Theater Management Group, Inc., now known as SFX-Theater Management Group, Inc. (TMG), is the prospective developer of the Opera House project. [1]

TOC's amended complaint raises seven claims. Several of these challenge the validity of the BRA's eminent domain taking of a portion of Mason Street, a public way that lies behind the Tremont on the Common condominium building. These claims include: (1) the taking was for an improper private purpose **[*2]** and not a valid public one (Count One); (2) the BRA exceeded its statutory authority in effecting the taking pursuant to *G.L.c. 121B, §§ 11* and *46(f)* (Count Two); (3) the BRA failed to give the statutorily required notice of its intent to take property and of the taking itself, in violation of *G.L.c. 79, §§ 5C* and *7C*, respectively (Counts Three and Four). TOC also challenges by way of certiorari review of the BRA's designation and approval of the Opera House renovation project as a demonstration project under *G.L.c. 121B, § 46(f)* (Count V). [2]

[*3] The BRA and TMG have moved for summary judgment on all five of these counts; TOC opposes the motion, arguing in part, pursuant to Mass.R.Civ. P. 56(f), that any ruling should be deferred until it has an opportunity to conduct additional discovery. For the reasons discussed below, the motions for partial summary judgment will be allowed.

Background

Procedural history: TOC filed its complaint on June 15, 2001. Taking the position that the gist of the complaint was a challenge to the BRA's designation of the Opera House project as a demonstration project pursuant to *G.L.c. 121B, § 46(f)*, the BRA filed the administrative record of its "proceedings" relating to the Opera House project as part of its answer, but also answered the numbered paragraphs of TOC's amended complaint. TMG was permitted to intervene as a defendant, and also answered the amended complaint. Upon the motion of the defendants, the court consolidated with this case TOC's separate action against the Public Improvement Commission of the City of Boston (the PIC), in which TOC challenges the validity of the PIC's decision to close a portion of Mason **[*4]** Street in Boston in connection with the Opera House project. [3]

After some skirmishes about whether the BRA properly could treat this case as one seeking judicial review of an administrative proceeding that would be governed by the Superior Court Standing Order 1-96, as amended--with the result that a motion for judgment on the pleadings

[1] The BRA and TMG are sometimes referred to collectively hereafter as "the defendants."

[2] The amended complaint contains two additional counts for damages relating to the taking of a portion of Mason Street, if that taking were to be found valid; TOC claims it owns a portion of the part of Mason Street that has been taken. These claims, set out in Counts Six and Seven, are not at issue at this time, since neither the BRA nor TMG has moved for summary judgment on them. They are not further discussed.

[3] The case is captioned, *Tremont on the Common Condominium Trust v. Public Improvement Commission,* C.A., No. 01-2706 Carhart (Suffolk Superior Court). While the PIC case is certainly related to TOC's case against the BRA and TMG, the parties have agreed to proceed solely with the case against the BRA and TMG first. Accordingly, this memorandum of decision does not concern TOC's claims against the PIC.

could be filed [4] --there was an agreement that the BRA and TMG would seek a resolution of the first five counts of TOC's amended complaint by summary judgment, based on the administrative record the BRA had filed, and with TOC free to argue pursuant to Mass.R.Civ.P. 56(f) **[*5]** , that it needed discovery before a ruling on the summary judgment motions. Following argument on the motions for summary judgment and opposition, I permitted TOC to conduct limited discovery in relation to Count I of its amended complaint. At the conclusion of that discovery, all parties filed additional memoranda and the TOC filed additional supporting materials.

The summary judgment record: TOC is a condominium trust that brings this action on behalf of the record unit owners of the condominium building and real property located at 151 Tremont Street in Boston. There are apparently 376 condominium units in the TOC condominium building, and approximately 700 people presently reside there. The building is 27 stories high and was constructed in 1964; it was converted to condominium ownership in 1982. The building fronts on Tremont Street, and abuts Mason Street at the back. Mason Street historically has been **[*6]** a public way that is east of and parallel to Tremont Street--between Washington and Tremont--and runs from Avery Street on the south to West Street on the north. The TOC condominium building itself was constructed as a rental apartment building part of an urban renewal project initiated by the BRA in the early 1960s. Part of the BRA's 1962 urban renewal plan states that loading access for the TOC building is to be from Mason Street, and no loading will be permitted from Tremont Street.

The BRA is a redevelopment authority that serves as the urban renewal agency for the city of Boston (the city) pursuant to *G.L.c. 121B, § 9*, as well as the planning board for the city under St. 1960, c. 652. TMG is a facility management company specializing in the operation of 1000- to 4000-seat multipurpose theaters in the United States and Canada. It is the proposed developer of the Opera House project. TMG currently manages theater facilities in San Antonio, New Orleans, Washington, D.C., Louisville, and Baltimore. TMG is a wholly owned subsidiary of SFX Entertainment, Inc., whose parent company is Clear Channel Entertainment.

The Boston Opera House is located at 539 Washington **[*7]** Street in Boston, in the center of the block runs from Avery Street to West Street. The rear of the building abuts Mason Street; the backs of the Opera House and the TOC condominium building are directly across Mason Street from each other. The Opera House was constructed between 1925 and 1928, opening in November 1928 as the B.F. Keith Memorial Theatre. [5] It was designed by Thomas White Lamb, described in the record as the premier theater architect of the early Twentieth Century, and it remains the only Boston theater which has retained the original Lamb-deigned interior and exterior. It opened as the official memorial to Benjamin Franklin Keith, known as the father of vaudeville. A 1979 report on Boston's theater district that is included in the BRA's administrative record states that the French Baroque interior was called at the time of the theater's opening "a dazzling architectural dream in ivory and gold with marble columns, walnut paneling and a single balcony plan." In 1965, the theater's name was changed by its then-owners, the Sack Theaters, to the Savoy Theatre. In approximately 1978, the Opera Company of Boston purchased the theater and renamed it the Boston Opera House. **[*8]** Title to the theater was transferred to Opera House, Inc., a non-profit corporation affiliated with the Opera Company of Boston that was organized in 1980 for the primary purpose of owning the property.

The Opera House is one of three theaters on the same block of Washington Street; the other two theaters are the Modern (built in 1913), to the north of the Opera House, and the Paramount (built in 1932) to the south. The three theaters historically have formed a central part of the "Washington Street theater district." The Opera House was listed in 1979 in the National Register of Historic Places, and in the 1990s was designated as a Boston landmark by the Boston Landmarks Commission. [6]

[*9] The administrative record reveals that for many years before TMG proposed to develop the Opera House, the area surrounding the Opera House and the Opera House itself had been a point of focus for the city and the BRA. In May 1979, the city and the BRA published a "preliminary report" entitled "Boston's Theatre District: A Program for Revitalization," which describes itself as the summation of a six-month planning effort for the area, following the publication of the "Lower

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[4] See, e.g., *Chandler v. County Comm'rs of Nantucket County, 437 Mass. 430, 434, 772 N.E.2d 578 (2002)*.

[5] The Opera House stands on the site of an earlier theater, the (second) Boston Theater, constructed in the Nineteenth Century with a seating capacity of 3,200.

[6] The Paramount Theater, which is described in the record as Boston's first example of an art deco theater, has also been designated by the Boston Landmarks Commission as a landmark.

Washington Street Area Study" in 1978. [7] The 1979 report describes the theater district as extending from the Back Bay to the Washington Street retail district, with a center at the junction of Boylston and Washington Streets (approximately two blocks from the Opera House). It further describes "the decay of the area" caused in part by "the association of the Combat Zone with the District." (Administrative Record [A.R.], vol. 6, p. 1742 et seq.), and includes a preliminary analysis of a market survey of the district funded by the Ford Foundation and the city's Office of Cultural Affairs that stresses the area's physical decline and the negative impact caused by the view of the public that the area was in decline **[*10]** and unsafe. (*Id.*, pp. 1767-68.) The report notes that the Opera House, then known as the Savoy Theatre, had recently been bought by the Opera Company of Boston, and states: "if the Savoy is to continue as the home of the Boston Opera Company, however, it is essential that its stagehouse also be rebuilt and expanded. Studies have been completed by the BRA to determine the feasibility of discontinuing Mason Street at the rear of the Savoy which is critical to any expansion and it is hoped that construction of an expanded stage will commence next year." (*Id.*, p. 1751.) Included as well in the report is mention of a possible development plan that would feature the three theaters on the "Savoy block" of Washington Street as anchors for a block that included in abutting properties small theater spaces, rehearsal rooms and theater-related workshops and studio spaces. The report mentions that "it is a fact of life that development or rehabilitation of a downtown area in Boston is dependent on some sort of subsidy[,]" (*id.*, p. 1772.), and also acknowledges the acute economic problem of theater properties because of the need to derive their revenues from "volatile" show business. **[*11]** (*Id.*, p. 1776.) It further describes the ongoing efforts to prepare grant applications for the Washington Street area and notes that the "existing, predominantly empty, yet handsome buildings in the Savoy block are the first priority." (*Id.*, p. 1773.)

The city and the BRA continued to devote attention to the Washington Street theater district in the 1980s. In early 1989, the city through the BRA and the office of arts and humanities, published the Midtown Cultural District Plan for the area stretching from the edge of the Boston Common to Downtown Crossing, the Theater District, the Combat Zone and Park Square. (The development of such a plan for this district was required under the city's 1987 Downtown Interim Zoning Plan.) The plan notes: "Despite Midtown's central location, many areas in the district are underutilized, uninviting, and often dangerous. In addition, half of the district's historic theaters are **[*12]** vacant . . . Many of the problems facing Midtown are the result of the economic decline of Boston that began during the Great Depression . . . Since the 1960s, the city and the private sector have tried many times to revitalize the area. While some of these efforts produced sporadic successes, each has failed to generate a critical level of investment necessary to spur revitalization of the area as a whole." (A.R., vol. 7, pp. 2082-83.) The plan proposed creating a revised cultural district with new as well as rehabilitated space for performing arts and exhibitions, and where the arts and theaters are visible and affordable, and present a vibrant community open 18 hours a day, 7 days a week. With respect to the Opera House, the plan states that the city was then seeking a large grant of funds from the state to renovate the Opera House, in part to provide first-class performance space, and in part to provide an anchor for the Cultural District's facilities along lower Washington Street. (A. R. vol. 7, p. 2126; see AR. vol. 6, pp. 1985-95.)

In January 1989, the board of the BRA voted to approve the Midtown Cultural District Plan for this area. The board also voted to petition the Boston **[*13]** Zoning Commission to adopt a new zoning code section, designated as Article 38, for the Midtown Cultural District that would follow the zoning change recommendations in the Midtown Cultural District Plan. (A.R., vol. 6, p. 1998-2000.) The zoning commission approved the petition, and Article 38 was adopted. (See *id.*, pp. 2003 et seq.)

In August of 1989, the same year as the Midtown Cultural District Plan was adopted, the BRA commissioned a study of the feasibility and cost of renovating the Boston Opera House. The resulting report was prepared by a private consulting group with assistance from the BRA staff, the city's Office of Arts and Humanities, a private theater consulting firm and a private construction firm. The report describes the building as being in "relatively good shape" but with a roof near the end of its useful life, local areas of disrepair in the interior, problematic plumbing and fire protection systems, and needing a heating system. (A.R. vol. 6, pp. 1804-05.) It further comments that "one of the underlying premises of the study, shared by a broad spectrum of city officials and members of the arts community, are two: "[(1)] the current stage of the Opera House **[*14]** is too small for the long term health and prosperity of the house; a substantial

[7] The Lower Washington Street study does not appear to be part of the administrative record.

stage addition is therefore essential. Because the current stage area borders directly on the street behind the building (Mason Street), a useful stage house addition cannot be accomplished without the closing of Mason Street[;] [(2)] the magnificent decor of the Opera House public spaces precludes any substantial change to these areas; any major change in layout or other significant renovation (aside from restoration of existing surfaces) should therefore be limited to backstage or non-public areas." (*Id.*, p. 1804.) The study includes an analysis of three different "renovation scenarios"--"full restoration," "cosmetic restoration and code upgrade," and simply "code upgrade." All three of these proposals call for an expansion and addition to the Opera House stage house and closing of Mason Street. "Obviously this premise has a significant impact on the overall renovation cost, but it is our opinion that it would be ill-advised to spend considerable sums of money necessary for a major building refurbishment without significantly improving the key performance area of the house, and thereby expand **[*15]** the range potential of users, and thus, revenue." (*Id.*, p. 1806.) The study states that the cost of the proposed "full renovation" would be approximately $ 22 million.

The Opera Company of Boston used the Opera House for performances in the 1980s, but neither the Opera Company nor its affiliated Boston Opera House, Inc. was able to raise sufficient funds needed to renovate the building and to continue to use it. As a result, the Opera House has been vacant since 1990. The fates of the Paramount and Modern Theaters were no better by that time.

On March 29, 1996, the city, the Boston Preservation Alliance and the National Trust for Historic Preservation organized the "Boston Historic Theater Charrette," a one-day workshop program that was billed as "an important initiative to save and revitalize a historic core of our community composed by the Modern, Paramount and Opera House theaters on Washington Street . . ." (A.R. vol. 6, p. 1890.) The charrette materials state that it was created "in direct response" to the fact that the three theaters had recently been listed on the National Trust for Historic Preservation's "Eleven Most Endangered Historic Places." (*Id.*) The charrette's **[*16]** goal was "to organize development proposals and implementation strategies to preserve and revitalize these significant landmarks and this area of downtown . . . All three theaters stand within a National Register Historic District and embody Boston's rich history as the arts and entertainment capital of New England." The report also describes the Opera House as "by far the most architecturally stunning and physically in tact of the three [theaters,] . . . sacred, and [it] must be preserved as a theater . . ." (A.R., vol. 6, p. 1889.)

Over 100 professionals involved in arts management, real estate development, architecture, education, construction, preservation, and urban planning attended the charrette to consider the problems associated with restoring their vitality from a variety of perspectives. (A.R. vol. 6, 1960.) TMG was one of the invited participants to the charrette.

In association with preparations for the charrette, a consulting firm, ArtsMarket Consulting, Inc., prepared a performing arts needs assessment for the city's Office of Cultural Affairs. The study includes among its "qualitative findings" that "trends in use and need suggest that concert hall needs in the **[*17]** 1800-2000 seat range will become more critical in coming years"; and "there are significant concerns that any renovation for the Opera House/Paramount/Modern Theaters ensure that the backstage facilities, including stage house size, dressing rooms, and all other technical needs, fully meet the needs of Boston arts organizations. Technical and back stage issues must be resolved to make these facilities a viable long term solution." (A.R. vol. 6, p. 1906.) The final report of the charrette speaks of the need for restoration and expansion of the stage space of the Opera House as part of the overall vision for revitalizing lower Washington street.

Representatives of TMG attended the Boston Historic Theater Charrette. Following the charrette, and working with John McLaughlin, a local (Cambridge, Massachusetts) development consultant, TMG secured an option to purchase the Opera House from the Boston Opera House, Inc. In late 1996, through John McLaughlin, TMG began working with the BRA to plan the project. TMG's planning continued through 1997 and 1998. On April 22, 1999, TMG filed with the BRA a Project Notification Form (PNF) for the Opera House project pursuant to Article 80 of the Boston **[*18]** Zoning Code. Under Article 80, the BRA was required to conduct a formal "Large Project Review" of the project. (See Article 80, § 80B-5.4 et seq., A.R. vol. 1, pp. 100-87.) This formal review included sending notice of the PNF to all relevant public agencies of the city, as well as providing notice to abutters, including TOC. As required by Article 80, the BRA conducted a "scoping session" on May 21, 1999, to discuss and review the proposed Opera House project and consider comments from public and private agencies

and citizens. [8] The scoping session gave birth on June 24, 1999, to a written "scoping determination" by the BRA--another mandated step of the Article 80 large project review process--which in this case directed TMG to conduct further study and examination of specified aspects of its proposed project. Including within the areas to be reexamined was TMG's proposal to close a portion of Mason Street in order to accommodate the proposed stage expansion for the Opera House. (The PNF proposed to take 6070 square feet of Mason Street in order to extend the Opera House to accommodate back stage and related additions, which would mean that Mason Street would terminate with dead **[*19]** ends on both the north and south sides of the Opera House.)

The record contains many letters commenting on the PNF, both in favor and against the project, from public agencies, individuals, and legal counsel for TOC and other residential abutters. Included in the letters are a great number from residents of TOC, most of them opposed to the proposed Opera House project, in large part because of the proposal to close a portion of Mason Street and to extend the Opera House to a point where it would abut directly TOC's building. One of the major criticisms was that the closing of Mason Street would prevent or substantially interfere with TOC's ability to use its building's loading docks; another was that the closing of Mason Street would create significant safety problems **[*20]** because fire and emergency vehicles would not be able to pass through. [9]

On December 14, 1999, TMG submitted its Draft Project Impact Report (DPIR) to the BRA, again as required by Article 80 of the Boston Zoning Code for large-scale projects. [10] The DPIR describes the extensive planning process TMG had engaged in, and its meetings with representatives of public agencies (e.g., the BRA, the Boston Transportation Department, Boston Fire and **[*21]** Police Departments), as well as community groups. It also describes in detail TMG's proposal to restore to its original design and condition the exterior facade of the Opera House as well as the interior, to provide new plumbing, electrical, heating, air conditioning systems, handicapped access and additional fire escape routes as well as a new roof. The backstage space would also be substantially improved. The Opera House seating would be decreased, from 2685 to 1500 seats. At the rear of the building a new addition would provide for a larger stage and two fully-enclosed loading docks that would be located on a portion of Mason Street. However, in response to the public comments TMG and the BRA received from abutting property owners, including TOC, the DPIR proposed reducing the area of Mason Street to be taken for this addition from 6070 to 3970 square feet. As a result of the reduction, Mason Street would remain open at all points, although its width in the area behind the Opera House would be reduced to ten feet. This is a sufficient width for fire and other emergency vehicles to pass as well as most trucks. TMG's proposal would leave Mason Street as a one-way northbound way (its **[*22]** current direction), but change the configuration of the southern portion of the street below the proposed Opera House expansion to have two lanes so that trucks and other vehicles making deliveries could enter Mason Street from Avery Street, turn around and leave Mason Street the same way. Under the modified plan, TOC would continue to have access to its loading docks on Mason Street.

In the DPIR, TMG explains its position that the stage of the Opera Rouse must be expanded to 45 feet deep and 90 feet wide in order to accommodate large, Broadway-type (musical) shows that TMG believes are necessary to offer, among other types of programs, to justify the initial cost of development and renovation of the Opera House, and to make the theater profitable as it moves forward. TMG further states **[*23]** that in order successfully to develop the Opera House project, it might seek status as a *Chapter 121A* entity.

The BRA published notice of its receipt of the DPIR on December 15, 1999, and conducted another community meeting on January 19, 2000, to receive further public comments on the project. Representatives of TOC

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[8] On June 2, 1999, the BRA held a community meeting on the proposed Opera House project to provide a forum for public comments about the PNF by abutters and other members of the community. Residents and representatives of TOC attended that meeting.

[9] One of the letters in the record, from the chairperson of the board of trustees of TOC, criticizes the closing of Mason Street and other aspects of the proposed Opera House project, but also states as follows: "During the past twenty years, no one in downtown Boston has been more adversely impacted by the rundown condition of the Opera House than the residents of TOC. The deplorable condition of its physical plant has led to the gathering of a number of people who engage in public drinking, vandalism and other crimes against person and property." (A.R. vol. 3, p. 501.)

[10] Article 80 review provisions for large projects apply to the Opera House project because it would have a total development of something over 100,000 square feet, which is the threshold for triggering large project review.

attended that meeting.

On March 24, 2000, TMG submitted an application to the BRA requesting it to approve and adopt a "demonstration project" pursuant to G.L.c. 121B, § 46(f), for the proposed Opera House project, that would involve the BRA acquiring title to "the portion of the Project [i.e., the Opera House project] necessary to effectuate the Project and convey such portion to [TMG], or its nominee, for the undertaking of the Opera House Renovation Project that includes the complete restoration of the Boston Opera House." (A.R., Vol. 1, p. 30.) The application noted that the Opera House had suffered extensive water damage because of the deteriorating condition of the roof and that unless major repairs were made soon, "there is a danger that with the continued weakening of the membrane the entire interior of the Opera House will be exposed **[*24]** to the elements and the possibility of the restoration of a landmark interior will be lost forever." *(Id.)* [11]

The board of the BRA considered the application to designate **[*25]** the Opera House project as a demonstration project at its regular meeting on March 30, 2000. Public notice of this meeting was given, but the board's agenda, and in particular the fact that consideration of TMG's application was on it were not part of the public notice. As a general matter, the BRA does not include the agendas of its meetings in the public notices of meetings that are published.

The BRA board considered and approved at the meeting a memorandum concerning the Opera House project that was presented by the BRA staff. The memorandum explains the application, describes the proposed project in some detail, and states that the demonstration project designation is necessary to permit and authorize the BRA to acquire title to certain portions of the Project area and then to convey title to TMG or its designee: "But for the [BRA] functioning as intermediary title holder and redeveloper, the Opera House Renovation Project can not be implemented and a historic and cultural asset of the City will be forever lost, seriously damaging the [BRA's] efforts to cause the revitalization of the Midtown Cultural District in accordance with the [BRA's] Midtown Cultural District Plan. **[*26]** " (A.R., Vol. 1, p. 9.) The memorandum further summarizes the history of the Opera House project and TMG's involvement, the community and public agency input into the review of the project, and the financial and other benefits to the city that could be expected to accrue from the project. After discussion, the BRA board voted to designate the project as a demonstration project under G.L.c. 121B, § 46(f). In particular, the board voted:[12]

> That the [BRA] in connection with the properties commonly known as the Boston Opera House and numbered 539 Washington Street and a portion of Mason Street in the Midtown Cultural District of Boston (collectively, the "Project"), hereby finds and declares as follows:
>
> (a) In order to prevent and/or eliminate urban blight, it is in the public interest of both the [BRA] and the City of Boston to assist [TMG], or its nominee, in the acquisition of the Project, in whole or in part, for the preservation of the Boston Opera House;
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> (b) The development of the Project by TMG, or its nominee, cannot be achieved without the assistance

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[11] This description of the Opera House building is consistent with the description in an appraisal dated June 18, 1999, that TOC included in the summary judgment record. The appraisal states a value of the building as $ 5.1 million, but notes that inspection reveals the exterior building has suffered from water, infiltration and moisture, that the roof has been leaking with resulting damage to plaster motifs in the interior and a weakening of the vaulted ceilings, and that evidence of continuing damage was observed throughout the building during the inspection. The record contains a number of references from a variety of sources to the ongoing deterioration of the building and the imminent danger to the building posed by the damaged roof. The perilous condition of the Opera House building does not appear to be something that TOC disputes.

[12] The BRA board further voted:

> That the [BRA], in connection with the properties commonly known as the Boston Opera House . . . and a portion of Mason Street in the Midtown Cultural District of Boston (collectively, the "Project Area"), hereby adopts the following "Demonstration Project Plan" in connection with the Project: (a) the [BRA] may obtain title to portions of the Project Area, respectively from TMG and the City of Boston necessary to effectuate the Project, by negotiation or through eminent domain takings under G.L.c. 79, as amended and applicable; and (b) the [BRA] may convey portions of the Project Area acquired by [sic. ; should probably read "to"] TMG, or its assignee or nominee. The Director is hereby authorized, on behalf of the [BRA] to execute such instruments or agreements with TMG, or its nominee, the City of Boston and other entities as may be necessary to effectuate the foregoing Demonstration Project Plan pursuant to G.L.c. 121B, § 46(f), as amended, and the [BRA's] role in the Project, including the planned reconveyance of the Project. **[*28]** The terms and conditions of all instruments and agreements shall be at the sole discretion of the Director.
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> (A.R., Vol. 1, pp. 25-26.)

of the Authority; and

(c) Based on (a) and (b) above, the Project constitutes a "demonstration **[*27]** project" under G.L.c. 121B, § 46(f), as amended.

In the months following these votes, the BRA took the following steps (among others) relating to the Opera House project: (1) in May of 2000, the BRA board voted to approve the issuance of a Preliminary Adequacy Determination concerning the Opera House project, waiving further review under Article 80--a procedural course of action specifically authorized by Article 80 as part of the large project review; on August 10, 2000, at a public meeting, the board voted to authorize the issuance of a notice of intent to take a certain portion of Mason Street in connection with the project; [13] and (3) on October 12, 2000, at a regularly scheduled public meeting, the BRA board voted to adopt a resolution for an Order of Taking a portion of Mason Street. With respect to the last, work done between May and October by TMG in response to comments of the BRA as well as abutters, including TOC representatives, had resulted in, among other changes, (a) relocation of the proposed Opera House loading docks so that less of Mason Street would be required to be taken; **[*29]** and (b) an increase in the overall width of Mason Street, and specifically a larger passage between the Opera House and TOC's building. The area of Mason Street that was ordered to be taken was 2,614 square feet, rather than 3,970 square feet.

The order of taking issued by the BRA on October 12, 2000, was registered in the Suffolk County Registry of Deeds on November 8, 2000. On March 28, 2001, the BRA, upon vote of its board, filed a petition with the PIC to discontinue use as a public way of the portion of Mason Street that the BRA had taken. **[*30]** The PIC voted to approve the BRA's petition on April 19, 2001.

As stated previously, in or around 1980, Opera House, Inc. became the record owner of the Opera House. Opera House, Inc. gave TMG an option to purchase the Opera House on December 18, 1996, which was later amended to extend to December 18, 1999. The summary judgment record indicates that in June 1998, Sarah Caldwell, a trustee of Opera House, Inc. and of the Opera Company of Boston, Inc., assigned to TMG three substantial mortgages and related promissory notes she held from one or both corporations--the total value of the instruments was $ 7,432,655. There was an agreement entered at that time between TMG and Opera House, Inc., providing that, following TMG's taking title to the Opera House upon foreclosure on the mortgages, it would assume responsibility for paying all outstanding debt associated with the Opera House and would also make the Opera House available for a period of time each year for a number of years for performances of operas at no or reduced ticket cost. It appears TMG was scheduled to foreclose in June 1999, but the foreclosure was derailed by the filing of an involuntary bankruptcy petition by a creditor **[*31]** of the Opera House, Inc. It further appears that ownership of the Opera House remains with Opera House, Inc. at the present time, [14] but TMG remains able to acquire title by foreclosing on the mortgages that it holds.

TMG is responsible for paying off all back takes, assessments and any other debts; the certificate of municipal liens for the property as of January 31, 2002, indicates that a total of $ 1,635,649.42 of taxes and assessments are due. [15] For purposes of summary judgment, the defendants have agreed that TMG intends to seek the forgiveness and abatement from the city for all back taxes and assessments, and would seek abatement of all taxes that might be assessed against the Opera House property while renovation work was being done. However, TMG **[*32]** will be fully liable for property taxes assessed against the Opera House property once the renovations are complete.

At issue in this case is the BRA's designation of the Opera House project as a demonstration project under G.L.c. 121B, § 46(f), independent of any urban renewal plan,

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[13] Counsel for TOC submitted a letter into the record of the BRA board's August 10, 2000, meeting in which he said that representatives of TOC, the BRA and TMG had been meeting regarding the Opera House project, that progress has been made, but there is as of yet no agreement although more meetings are scheduled. The letter reflects an awareness on counsel's part of the proposal for the BRA to vote that day to approve a notice of intent to take a portion of Mason Street.

[14] TOC has submitted a document indicating that the Boston Water and Sewer Commission took the Opera House in 1998 for nonpayment of water and sewer charges, but this taking in any event is subject to the right of redemption on the part of Opera House, Inc.

[15] The record contains a copy of an affidavit of Sarah Caldwell that was filed in June 1999 in the involuntary bankruptcy proceeding mentioned in the text. Ms. Caldwell's affidavit states that at that time, the total of mortgage notes and liens on the Opera House building came to $ 12,046,291. The relationship of this number to the municipal lien certificate and other figures in the record is not clear.

and its taking of property pursuant to that demonstration project. There are four other examples of projects that the BRA has designated a demonstration project unconnected to an urban renewal plan and exercised eminent domain powers as part of that demonstration project: Two Financial Center, Palmer Street/Dudley **[*33]** *Square, Stanwood Street, and Grove Hall Retail Center Project.* [16]

Discussion

The first two counts of the amended complaint challenge the BRA's taking of a portion of Mason Street on constitutional and statutory grounds, respectively: that there was no public purpose for the taking (Count I), and the taking was *ultra vires* (Count II). Since there would be no reason to consider the public purpose issue unless the BRA had the requisite statutory authority to effect the taking, I consider the latter question first.

There is a threshold issue to consider, however. The defendants claim that they are entitled to summary judgment on Counts I and II because TOC's claims are untimely. In the defendants' view, the only vehicle available to TOC to challenge the taking was by means of an action in the nature of certiorari under G.L.c. 249, § 4 **[*34]** . Since that statute has a sixty-day limitations period and since TOC did not file its complaint until more than a year after the BRA approved the TMG demonstration project plan and seven months after the BRA's order of taking was recorded in the registry of deeds, TOC is simply too late.

At least with respect to TOC's claim of invalidity because there was no public purpose for the taking, the defendants' argument fails. ***HN1***[] A property owner--which the defendants assume TOC is for purposes of summary judgment--may bring a challenge to the validity of an eminent domain taking within three years of the taking. G.L.c. 79, §§ 16, 18. See Cumberland Farms, Inc. v. Montague Economic Development Corp., 38 Mass.App.Ct. 615, 616, 650 N.E.2d 811 and n. 1 (1995). TOC was clearly within the three-year limit of the taking when it filed its complaint on June 15, 2001.

It is a more difficult question whether TOC's *ultra vires* claim is timely. The claim challenges the BRA's exercise of authority under G.L.c. 121B, §§ 11 and 46(f). ***HN2***[] Judicial review of the BRA's actions in its capacity as an urban renewal **[*35]** agency is not generally available. See St. Botolph Citizens Committee, Inc., v. Boston Redevelopment Auth., 429 Mass. 1, 10-11, 705 N.E.2d 617 (1999). Under c. 121B, § 47, an aggrieved person may obtain judicial review of an eminent domain taking by an urban renewal agency, see, e.g, Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence, 403 Mass. 531, 537 n. 9, 531 N.E.2d 1233 (1988) (*Elks Lodge*,), but the statute expressly limits the judicial review to an action in the nature of certiorari that must be brought within 30 days after the challenged taking. For reasons discussed below, I conclude that § 47 does not apply to this case. Nevertheless, in light of the facts that (1) the BRA's eminent domain taking is at the heart of TOC's complaint, and ***HN3***[] in those circumstances, the Supreme Judicial Court has permitted a party whose property is taken to obtain judicial review even absent an express right of appeal in the statute, see id. at 536-37; see also St. Botolph Citizens Committee, Inc., v. Boston Redevelopment Auth., supra, 429 Mass. at 12.; and (2) the *ultra vires* challenge is arguably a form of challenge to the **[*36]** validity of the taking permitted by G.L.c. 79, §§ 16, 18, I address the merits of TOC's *ultra vires* claim. [17]

[*37] *I. Count Two: Taking in Excess of Authority*

The BRA's order of taking states that the property is taken "in pursuance of [the BRA's] powers as set forth in Chapter 121B, Section 46(f) . . ." and is "being taken . . . to eliminate 'urban blight,' as described in Chapter 121B, Section 46(f)." [18]

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[16] To the extent relevant to the discussion of TOC's claims, other information contained in the summary judgment record will be mentioned below.

[17] The recent decision of the Supreme Judicial Court in Chandler v. County Comm'rs of Nantucket County, supra, 437 Mass. 430 (2002), referenced by TOC, may suggest that the defendants are correct, and that TOC was required to raise its *ultra vires* claim solely by way of certiorari within 60 days of the BRA's challenged proceedings: the plaintiffs in *Chandler*, all landowners whose property was taken by the defendant commissioners under G.L.c. 82 (see id. at 431), challenged the statutory authority of the commissioners to do so by an action in the nature of certiorari under G.L.c. 249, § 4, and not under G.L.c. 79, §§ 16, 18. See id. at 434. See also Raso v. Lago, 958 F. Supp. 686, 695-96 (D.Mass. 1997), affirmed, 135 F.3d 11, cert denied, ***525 U.S. 811, 119 S. Ct. 44, 142 L. Ed. 2d 34 (1998)***. For the reasons stated in the text, however, I will address the merits of the claim.

[18] General Laws c. 121B, § 46(f) reads as follows:

HN4[] Section 46. An urban renewal agency shall have

TOC argues that the BRA has no authority to take property under G.L.c. 121B, § 46(f) (§ 46(f)), for a "demonstration project plan" at least in a situation where the demonstration **[*38]** project is not connected to an "urban renewal plan" or "urban renewal project" as those terms are defined in G.L.c. 121B, § 1. In TOC's view, insofar as the BRA is exercising its powers as an urban renewal agency under 121B, its authority to take property by eminent domain is confined to cases where the BRA has adopted an urban renewal plan that is then approved by the city council and mayor of Boston as well as certain State and Federal agencies. See G.L.c. 121B, §§ 47, 48. Its argument appears to be that the BRA in fact may only take property by eminent domain under one of those two sections, or in any event, any taking the BRA seeks to justify under § 46(f) must be in connection with a demonstration project that is part of an urban renewal plan or urban renewal project approved under one of those sections.

As the defendants point out, G.L.c. 121B, § 11, grants the BRA a very broad, general authority to take property by eminent domain:

> HN5[] Each operating agency [19] . . . shall have the powers necessary or convenient to carry out and effectuate the purposes of relevant provisions **[*39]** of the General Laws and shall have the following powers in addition to those specifically granted in this chapter:--
>
> . . .
>
> (d) to take by eminent domain under chapter [79] or chapter [80A], . . . any property, real or personal, or any interest therein, found by it to be necessary or reasonably required to carry out the purposes of this chapter, or any of its sections, and to sell, exchange, transfer, lease or assign the same . . .

(Emphasis supplied.) HN6[] The meaning of this language is clear, and therefore should be construed in accordance with that meaning. E.g., Bronstein v. Prudential Ins. Co. of America, 390 Mass. 701, 704, 459 N.E.2d 772 (1985). Section 11 confers on the BRA the right to take property by eminent domain whenever it determines the taking is necessary to carry out the purpose of any section of the urban renewal statute, c. 121B. Section 46(f) is manifestly a section of c. 121B. It follows, therefore, that if the BRA finds a taking to be necessary "for the prevention and elimination of slums and urban blight" under § 46(f), such a taking has the requisite statutory basis in § 11(d), unless § 46(f) itself limits the BRA's ability to take property by **[*40]** eminent domain to situations where the taking is part of an approved "urban renewal project."

There is no such limitation. HN8[] Section 46 sets out in eight separate subsections (§ 46(a) through (h)) a set of powers that the section deems additional to those granted in other parts of c. 121B. Included among these are the power "to prepare or cause to be prepared urban renewal plans, . . ." (§ 46(c)), and "to engage in urban renewal projects . . ." (§ 46(d)). Section 46(f), which gives the power "to carry out demonstrations for the prevention and elimination of slums and urban blight," contains no language that ties such demonstrations to urban renewal plans or projects. Contrast § 46(h), which grants the power "to own, construct, finance and maintain intermodal transportation terminals *within an urban renewal project area*" (emphasis supplied). If the legislature **[*41]** had intended to tie "demonstrations" to ones that formed components of an urban renewal plan, project or project area, it would have so stated. See, e.g., Negron v. Gordon, 373 Mass. 199, 203, 366 N.E.2d 241 (1977).

Moreover, support for the view that the BRA does have statutory power to take property by eminent domain independent of an urban renewal plan or project comes from G.L.c. 121B, § 45, the section of the statute that declares the purpose of and necessity for urban renewal programs in general. General Laws c. 121B, § 45, provides in part:

> HN9[] It is hereby declared . . . that because of the economic and social interdependence of different communities and of different areas within single communities, the redevelopment of land in decadent, substandard and blighted open areas in accordance with a comprehensive plan to promote

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> all the powers necessary or convenient to carry out and effectuate the purposes of relevant provisions of the General Laws, and shall have the following powers in addition to those specifically granted in section eleven or elsewhere in this chapter:--
>
> . . .
>
> (f) to develop, test and report methods and techniques and carry out demonstrations for the prevention and elimination of slums and urban blight;

[19] HN7[] The term "operating agency" is defined to mean "a housing authority or redevelopment authority." G.L.c. 121B, § 1.

the sound growth of the community is necessary in order to achieve permanent and comprehensive elimination of existing slums and substandard conditions and to prevent the recurrence of such slums or conditions . . . that the acquisition of property for the purpose of eliminating decadent, substandard **[*42]** or blighted open conditions thereon and preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, the disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by urban renewal agencies and any assistance which may be given by cities and towns or any other public bodies in connection therewith are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the acquisition, planning, clearance, conservation, rehabilitation or rebuilding of such decadent, substandard and blighted open areas for residential, governmental, recreational, educational, hospital, business, commercial, industrial or other purposes, . . . are public uses and benefits for which private property may be acquired by eminent domain . . .

It is further declared that while certain of such decadent, substandard and blighted open areas, or portions thereof, may require acquisition and clearance because the state of deterioration may make impracticable the reclamation of such areas or portions by conservation and rehabilitation, other of such areas, or portions thereof, are in **[*43]** such condition that they may be conserved and rehabilitated in such a manner that the conditions and evils enumerated above may be alleviated or eliminated; and that all powers relating to conservation and rehabilitation conferred by this chapter are for public uses and purposes for which public money may be expended and said powers exercised.

The necessity in the public interest for the provisions of this chapter relating to urban renewal projects is hereby declared as a matter of legislative determination.

This section supplies an unquestionably broad description of purposes for which an urban renewal agency such as the BRA may exercise the power of eminent domain. While it mentions the need for redevelopment of land to be "in accordance with a comprehensive plan," the section nowhere defines that "plan" as being limited to a formal "urban renewal plan" within the meaning of c. 121B, § 1, and more to the point, nowhere restricts an agency's power of eminent domain to taking property in conjunction with an approved "urban renewal plan." Compare *Chandler v. County Comm'rs of Nantucket County, supra, 437 Mass. at 435-38*. Furthermore, the second paragraph of **[*44]** § 45 quoted above, relating to conservation and rehabilitation of blighted open areas or portions of such area, makes no reference to a "comprehensive plan" at all.

It is true that decisions of the Supreme Judicial Court have described the BRA's powers under G.L.c. 121B as involving projects that are "publicly initiated and planned, and implemented in conformance with an urban renewal plan." *St. Botolph Citizens Committee, Inc., supra, 429 Mass. at 11*. See *Boston Edison Co. v. Boston Redevelopment Auth., 374 Mass. 37, 52-53, 371 N.E.2d 728 (1977)*. See also *Elks Lodge, supra, 403 Mass. at 534-35, 538*. However, in two of these cases, *St. Botolph* and *Elks Lodge,* the actual projects under review by the court were in fact "urban renewal projects," as defined in G.L.c. 121B, § 1, that the urban renewal agency was undertaking pursuant to an "urban renewal plan," as also defined in that section, and thus the court's description of c. 121B powers must be read in that context. [20] In short, in none of these cases was the court undertaking to provide a comprehensive statement about the limits of the BRA's powers as an urban **[*45]** redevelopment agency under c. 121B in general, or about the limitations of its power to take property by eminent domain under that chapter.

In sum, the defendants are correct that G.L.c. 121B furnishes the BRA with the requisite statutory power to take property by eminent domain in furtherance of a demonstration project under § 46(f) to prevent and eliminate slums and urban blight, independent of an "urban renewal plan" or "urban renewal project." [21] The defendants are entitled to summary judgment on Count

[20] *In the third case,* Boston Edison Co. v. Boston Redevelopment Auth., 374 Mass. 37, 371 N.E.2d 728 (1977), the court was reviewing a development project that was governed by G.L.c. 121A, and was describing, for comparison purposes, redevelopment projects under c. 121B "in general." *Id. at 52*.

[21] The issue here is whether the necessary statutory authority exists for this taking. Whether the BRA possessed an adequate factual basis to support the BRA's determination to take the property for this purpose is a separate question. It is addressed below.

Two of the amended complaint.

[*46]

II. Count One: Improper Taking

TOC claims in Count One that the BRA's taking of a portion of Mason Street is invalid because it was not predominantly for a public purpose. The primary purpose, TOC states, was to benefit TMG, essentially giving TMG the means--through the acquisition and then transfer of the Mason Street parcel as well as through tax benefits--to reap a windfall from the Opera House project.

HN10[↑] "Exercising the power of eminent domain is improper unless the taking is for a public purpose." *Elks Lodge, supra, 403 Mass. at 539*. Logically, therefore, it makes sense to start with the question whether a taking of private property to eliminate and prevent slums and urban blight qualifies as a public purpose. The answer is yes. ***HN11***[↑] Under *c. 121B, § 45*, [22] both (1) the acquisition of property for the purpose of eliminating decadent, substandard or blighted open conditions thereon and preventing recurrence of such conditions in the area, and (2) site improvement and the disposition of property for redevelopment incidental to the foregoing, are among the public purposes and uses for which the power of eminent domain may be exercised. The same holds true **[*47]** of the conservation and rehabilitation of decadent, substandard and blighted open areas, "or portions of them," described in the second paragraph of *§ 45*. Carrying out a demonstration project to prevent and eliminate slums and urban blight, and exercising the power of eminent domain in furtherance of that project, fit squarely within the scope of these legislatively determined public purposes. TOC does not appear to contend otherwise.

The next question is whether the summary judgment record as it currently stands supports the validity, as a matter of law, of the BRA's finding that in order to prevent and eliminate urban blight, it was necessary to assist TMG in the acquisition of the project in whole or in part for the preservation of the Opera House--which would include assisting by acquiring the challenged portion of Mason Street. The parties disagree about whether the BRA's determination must be supported by substantial evidence, **[*48]** or whether I simply review the finding to determine whether it was arbitrary and capricious. [23] **[*49]** I decline to join this debate: even if the test were one of substantial evidence [24], the BRA has met it.

The materials in the BRA's administrative record reveal that for more than 20 years before it voted to approve the demonstration project plan and the taking of the Mason Street parcel, the BRA and the city had demonstrated a concern about the "decaying" [25] status of lower Washington Street in Boston, and a very specific concern about the deterioration of the Washington Street theaters, including, above all, the Opera House. The Opera House itself was the focus of a series of special reports prepared by the BRA, by other city agencies, and by private groups. The first of these reports in the record is dated 1979, followed by the Midtown Cultural District Plan in February 1989, and **[*50]** the petition for a special zoning chapter to implement that district plan, a report prepared by private consultants for the BRA about the feasibility and costs of renovating the Opera House in August 1989, and the Boston Historic Theater Charrette in March 1996. The 1989 report noted the Opera House building, while in relatively good shape, was suffering the effects of old age and lack of maintenance, including a roof near the end of its days. By the 1996 Boston Historic Theater Charrette, the Opera House (along with the other two

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[22] The pertinent portions of *§ 45* are quoted in the text above at pp. 23-24.

[23] The defendants argue that if any judicial review at all is available of the BRA's determination, it is governed by the arbitrary and capricious standard applies, see, e.g., *Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence, 403 Mass. 531, 537-38, 531 N.E.2d 1233 (1988)*; *Boston Edison Co. v. Boston Redevelopment Auth., supra, 374 Mass. at 52-53*; and in any event the court's role is even more limited than usual because determining whether property fits within a blighted area is for the Authority alone to decide, citing *Moskow v. Boston Redevelopment Auth., 349 Mass. 553, 561, 210 N.E.2d 699 (1965)*, cert. denied, ***382 U.S. 983, 86 S. Ct. 558, 15 L. Ed. 2d 472 (1966)***. TOC contends that none of these cases governs here because there was no publicly reviewed and approved urban renewal plan or urban renewal project involved, and the deferential standard applies only when such a plan or project is in issue. There is some merit to TOC's position, but I do not need to resolve the question.

[24] ***HN12***[↑] "The substantial evidence test is commonly understood to require that agency findings must rest upon 'such evidence as a reasonable mind might accept as adequate to support a conclusion.' . . . Review under the standard entails scrutiny of the whole record to determine whether substantial evidence exists." *Boston Edison Co. v. Boston Redevelopment Auth., supra, 374 Mass. at 54* (citations omitted).

[25] See "Boston's Theatre District: A Program for Revitalization" (May 1979) (A.R. vol. 6, p. 1747; see also Midtown Cultural District Plan (February 1989) (A.R. vol. 7, pp. 2082-83, 2117-18.)

theaters on the same block) had been listed on the National Trust for Historic Preservation's Eleven Most Endangered Historic Places in America List. By the time the BRA voted to designate the Opera House project as a demonstration project, an architect who has opposed the project noted that delay could result in the roof falling in (A.R. vol. 6, p. 1633), and the record reflects that engineers at that point gave the roof about one more year. Roof failure due to water infiltration is the most common reason for the loss of older theaters in the United States, and the Opera House roof's leaking has damaged plaster motifs and weakened the vaulted ceiling. (A. **[*51]** R. vol. 2, p. 212.) According to contractors and an ornamental plastering company, if deterioration continued at the rate it was progressing in March of 2000, there would be nothing left to restore in twelve to eighteen months. What all the documentation shows is that the BRA and the city had consistently viewed the area as one that holds, in the theaters, critical elements of the city's cultural and historical identity, but also as one that has proved resistant to many different efforts to rehabilitate and revitalize over the years.

The documents in the administrative record mentioned here also paint a compelling picture about the need to move quickly with respect to the Opera House because of the growing threat caused by age and the elements to the physical integrity of the building and its many unique (in Boston) internal **[*52]** design features. No one, including TOC, disagrees with the proposition that the preservation and restoration of the Opera House qualifies as a public purpose that the BRA is entitled to pursue. Nor is there any dispute that the Opera House, vacant since approximately 1990, is currently in a state of very dangerous disrepair. The DPIR submitted by TMG during the Article 80 review of the Opera House project--a review that TOC affirmatively does not challenge--describes the physical condition in stark terms.

Finally, one finds in the administrative record a consistent thread of concern about the small stage and back stage of the Opera House and the implications of these size constraints for the success of any efforts to restore and revitalize the Opera House as a viable performance space. The 1979 report on Boston's theater district states that expansion of the stagehouse is essential, and that the BRA was then studying the feasibility of discontinuing Mason Street at the rear of the theater to enable this critical expansion to occur. (A.R., vol. 6, p. 1751.) The 1989 consultant's renovation feasibility study, reflecting the views of "a broad spectrum of city officials and members of **[*53]** the arts community," echoes the refrain: the stage is too small, a stage addition is essential, and because Mason Street is directly behind the building, no expansion of the stage can occur without closing Mason Street. (Id., p. 1801.) Again in 1996, a performing arts facility needs assessment conducted by consultants for the city in connection with the Boston Historic Theater Charrette focused on stage size and technical needs of theaters as problems requiring solution if a viable future for the three Boston historic theaters were to be found. (*Id.,* p. 1889.) All of these studies and other documents predated any involvement of TMG in the Opera House project. In combination, they provide substantial evidence to support the determination of the BRA that the proposed demonstration project for the Opera House would require the taking of a portion of Mason Street to permit the proposed expansion of the back stage area for the theater, which the BRA accepts as a necessity if the Opera House project is to have a chance to succeed in its goal of reestablishing a functioning, successful performance venue. [26]

[*54] Although *§ 46(f)* authorizes "demonstrations for the prevention and elimination of . . . urban blight," *c. 121B* does not define the term "urban blight." [27] *Chapter 121B* does, however, define the terms "blighted open

[26] TOC stresses there is information in the record indicating that very few of the theaters in New York City--the original home of the "Broadway-type" shows TMG wishes to attract to the Opera House--have stage dimensions as large as TMG says it needs. This fact is beside the point. The BRA is not required to reject TMG's analysis because there is some evidence that might at first glance lead to a different conclusion, particularly in light of the history of observations in the record that a stage house expansion was necessary. Furthermore, nothing in the record reveals how big the stages and stage houses are at the theaters in New York that housed shows like "Lion King," and other large-scale musical productions that appear to be the ones to which TMG, and TOC, refer.

[27] Obviously, *§ 46(f)* also authorizes demonstrations to prevent or eliminate "slums." Since the BRA voted to approve the Opera House demonstration project to prevent or eliminate only "urban blight," I focus solely on this term.

area" [28] **[*56]** and "decadent area" [29] in § 1. I agree with the defendants that HN13[↑] these terms should be given their common sense meanings, and that they need to be read in conjunction with the related statutory definitions "to produce an internal consistency." Teletsky v. Wight, 395 Mass. 868, 873, 482 N.E.2d 818 (1985). [30] HN14[↑] The word "blight" is defined to mean in relevant part "something that impairs growth, withers hopes and ambitions, or impedes progress and prosperity." The American Heritage Dictionary of the English Language (3d ed. 1992). In the statutory context in which "urban blight" occurs, and drawing on the two statutorily defined terms cited above, "urban blight" reasonably can be understood to refer generally to a condition in a portion of the city that is "detrimental to the safety, health, morals, welfare or sound growth of a community," is caused by one of a number of factors including the physical deterioration of facilities and buildings in the area, and that **[*55]** is not being alleviated or remedied "by the ordinary operations of private enterprise." [31] There is clearly substantial evidence in this record to support the BRA's view that the Opera House renovation project qualified as contributing to the elimination of "urban blight." Cf. Shriners' Hosp. for Crippled Children v. Boston Redevelopment Auth., 4 Mass.App.Ct. 551, 555-59, 353 N.E.2d 778 (1976). [32]

[*57] In its application for a demonstration project, TMG commits itself to fund, undertake and complete a complete renovation, restoration and refurbishment of the Opera House at substantial private cost (approximately $ 26 million). The demonstration project plan, as approved by the BRA authorizes the BRA to assist the Opera House project by acquiring the portion of Mason Street that the BRA has deemed necessary for the success of this project. TOC is correct that the Opera House project contemplates TMC, rather than the BRA, as the major initiating force, and in that sense the project resembles one approved under G.L.c. 121A. However, the BRA provides the assistance of effectuating the taking of the necessary portion of Mason Street, a step that could not happen as quickly or directly, if at all, under c. 121A See G.L.c. 121A, § 6. [33] The history of failed efforts to revitalize the Opera House (and the other theaters) up to

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[28] A "blighted open area" is defined in c. 121B, § 1, to include "a predominantly open area which is detrimental to the safety, health, morals, welfare or sound growth of a community because it is unduly costly to develop it through the ordinary operations of private enterprise . . . by reason of the need for . . . unduly expensive measures incident to building around or over rights-of-way through the area, . . . or by reason of . . . deterioration of site improvements or facilities, division of the area by rights-of-way, diversity of ownership of plots, . . . or because there has been a substantial change in business or economic conditions or practices or an abandonment or cessation of a previous use or of work on improvements begun but not feasible to complete without the aids provided by this chapter, or by reason of any combination of the foregoing or other condition; or a predominantly open area which by reason of any condition or combination of conditions which are not being remedied by the ordinary operations of private enterprise is of such a character that in essence it is detrimental to the safety, health, morals, welfare or sound growth of the community in which it is situated."

[29] HN15[↑] The term "decadent area" is defined in G.L.c. 121B, § 1, in part to mean: "an area which is detrimental to safety, health, morals, welfare or sound growth of a community because of the existence of buildings which are out of repair, physically deteriorated, . . . or obsolete, or in need of major maintenance or repair, . . . or because of excessive land coverage or because of diversity of ownership, irregular lot sizes or obsolete street patterns make it improbable that the area will be redeveloped by the ordinary operations of private enterprise, or by reason of any combination of the foregoing conditions."

[30] Further, "HN16[↑] as to interpretation of statutes governing [an] agency, [courts] defer to the agency's interpretation and application of the statute within which it operates." Tri-County Youth Programs, Inc. v. Acting Deputy Dir. of the Div. of Employment & Training, 54 Mass.App.Ct. 405, 408, 765 N.E.2d 810 (2002).

[31] These quoted phrases appear in the definitions of both "blighted open area" and "decadent area."

[32] TOC complains that the lower Washington Street area has experienced a great deal of development in the last few years, all of which undercuts the BRA's determination of an area characterized by "urban blight." The fact of new development does not mean, however, that the entire area's redevelopment is complete, and of course none of the new development has touched the Opera House itself. It also bears pointing out again that all the new development projects were themselves completed with BRA assistance. See note 12 above.

[33] Presumably what makes this a "demonstration project" is that it demonstrates a combination of private initiative with the focused use of public authority (i.e., the BRA's exercise of its eminent domain power) in order to achieve the goal of the restoration of the Opera House. One of the other § 46(f) demonstration projects approved by the BRA, the Palmer Street/Dudley Square project, at least as described by TOC in its supplemental memorandum, also involved the approval of a demonstration project to permit the BRA to exercise its power to take property by eminent domain directly as a means to act quickly on a project where speed was necessary.

the time of TMG's application demonstrates that the BRA's taking was permissibly deemed by it to be a necessary component of any development designed to succeed.

[*58] TOC also contends that despite the evidence presented by the defendants concerning the purpose for the Mason Street taking, the taking was in bad faith because in fact it was made to accomplish a private purpose of enriching TMG. It is certainly the case that ***HN17***[↑] an eminent domain taking made solely to benefit a private person or interest is subject to challenge on this ground. See *Pheasant Ridge Assoc. Ltd. Partnership v. Burlington, 399 Mass. 771, 775-76, 506 N.E.2d 1152 (1987)*, and cases cited; *HTA Limited Partnership v. Massachusetts Turnpike Auth., 51 Mass.App.Ct. 449, 454-55, 747 N.E.2d 707 (2001)*. The undisputed facts in this summary judgment record, however, defeat TOC's argument.

Courts have identified primarily two factors that may indicate a taking was made in bad faith--to benefit private parties or for some other illegitimate purpose: (1) the agency taking the property did not follow its usual practices in doing so, and (2) the agency or public body on whose behalf the taking was made had never considered using the property for the purpose stated in the taking. See *HTA Limited Partnership, 51 Mass.App.Ct. at 456*, citing *Pheasant Ridge Assocs. Ltd. Partnership v. Burlington, supra, 399 Mass. at 778*; **[*59]** and *Elks Lodge, supra, 403 Mass. at 552-53*.

With respect to the first factor, at the outset, TOC claimed that the BRA had never taken private property in conjunction with a "demonstration" project under *§ 46(f)*, or at least had never done so with the intent of then transferring title to that property to another private party. The record after the discovery I earlier permitted shows that there have been four other occasions where the BRA has followed just this path. TOC now argues that all four of these examples are distinguishable from this case, and in any event four examples out of the many urban renewal takings that the BRA has made demonstrates that this was not a usual practice. The argument deserves rejection. As the BRA states, it is not surprising that the various demonstration projects involving takings are different from one another, since the point of a demonstration project is to try out a plan or approach that presumably is new or different from the usual manner in which the BRA operates.

More significantly, the fact that the BRA has included a taking of private property in only four other projects involving a designation of a demonstration plan under **[*60]** *§ 46(f)* does not create a dispute of material fact about whether the BRA did not "deal with the acquisition [of a portion of Mason Street] in accord with its usual practices." *Pheasant Ridge Assocs., 399 Mass. at 778*. ***HN18***[↑] The BRA has broad discretion under *G.L.c. 121B* and *c. 121A* to deal with projects and programs of urban redevelopment. That it chooses in some cases to proceed under one available and permissible statutory provision while in a greater number of cases it acts under another provision, without more, seems immaterial to the question whether it has acted in bad faith. The point of focus in considering whether a public agency has failed to follow "usual practices" is not the particular statutory authority under which the agency chooses to act under in making the taking, but the practices or procedures it follows in deciding to make the taking. Thus in the *Pheasant Ridge* case, the court stressed that unlike other takings, in this instance the town did not consult with any other town agencies with responsibilities for activities in the area where the land was to be taken, never informed the town's finance committee of the purpose of the taking, and indeed **[*61]** "developed" the purpose for the taking within minutes of the town meeting where the vote to take the property was presented. *Pheasant Ridge Assocs., 399 Mass. at 778*. Here, in contrast, the record demonstrates that the BRA's consideration of the Opera House project has followed all the usual steps, including a review of the project's zoning application under Article 38 of the Boston Zoning Code that applies to the Midtown Cultural District; and a thorough review by the BRA and other city agencies as part of the Article 80 large project review process that itself encompassed extensive and continuing consultations with municipal officials on concerns about fire safety, vehicular use of Mason Street, location of underground utilities, and continuing consultations with abutters such as TOC and other residential buildings and lawyers representing such abutters, as well as formal action by the BRA board at regularly scheduled and noticed public meetings after the customary presentation of materials and recommendations from the BRA's staff.

TOC asserts that (1) the BRA's hasty consideration of TMG's application for approval of a demonstration project under *§ 46(f)*--the **[*62]** application was filed on March 24, 2000, and the BRA board approved the application at its meeting on March 30, 2000; and (2) the conduct of the BRA staff in allegedly adopting "lock, stock and barrel" (plaintiff's Rule 9A response, p. 19) TMG's language describing the demonstration project plan and presenting it to the BRA board for its rubber stamp approval, suggest

if not indicate a failure to follow usual (and appropriate) procedures. The depositions of the two BRA staff members that TOC took pursuant to its request for discovery, however, reveal that in fact the idea of presenting the Opera House project as a demonstration project under § 46(f) rather than an urban renewal project under c. 121B, §§ 47-48, or a development project under c. 121A came from the BRA, and did so at some point in 1999 in connection with TMG's filing of the PNF. [34] They also reveal that the BRA staff members made a number of changes to the proposed memorandum submitted by the defendants before the memorandum went to the BRA board, and that other developers submit draft memoranda to be reviewed and used by the BRA staff in preparing a submission for the board about a particular project. This is not the **[*63]** stuff of "unusual practices."

As for the second factor--the agency's lack of interest in the area where the taking is to occur, or failure to have considered the site before for the purpose given for the taking--the record here contains abundant evidence of the opposite. The BRA and the city have had a longstanding interest in the revitalization of the lower Washington Street area in general and the Opera House in particular for many years, and at least since 1979, the BRA is on record as recognizing that to make any rehabilitation of the Opera House succeed, expansion and a concomitant taking of property in Mason Street **[*64]** would be necessary. See *Elks Lodge, supra, 403 Mass. at 552*. See also *Chelmsford v. DiBiase, 370 Mass. 90, 93, 345 N.E.2d 373 (1976)*.

There is no dispute by TOC that ***HN19***[↑] a taking may be valid even if a private developer receives benefits from the taking, so long as the predominant purpose of the taking is a public one. See, e.g., *Elks Lodge, 403 Mass. at 551*; *Papadinis v. Somerville, 331 Mass. 627, 632, 121 N.E.2d 714 (1954)*. TOC appears to extract from this general rule a corollary to the effect that it is necessary to measure, perhaps quantitatively, the public good to be derived from the taking against the benefits that the private developer will receive. This is not correct. No quantitative weighing of public versus private benefit is called for, and in any event, could not be accomplished. In this case, the record establishes that the BRA's taking of a portion of Mason Street in connection with the Opera House project was for a public purpose, and there has been nothing presented to raise an issue of material fact about the *bonafides* of that taking. It is true that TMG will receive benefits from this project, including title to the portion **[*65]** of Mason Street that the BRA has taken, and the forgiveness of unpaid taxes on the Opera House property. But it is also true that TMG, through this project, is committing itself to restore, refurbish and improve the Opera House and to bring back to life a treasured artistic and cultural asset of the city. The benefits that will accrue to TMG have been shown as a matter of law to be simply incidental to the primary public purpose. Moreover, as was true in the *Elks* case, "there is nothing in the record . . . to show that the local authorities had any motive other than the performance of their public duty." *Elks Lodge, supra, 403 Mass. at 553*. The defendants are entitled to summary judgment on Count One of the amended complaint. [35]

[*66] *III. Counts Three and Four: Improper Taking: Failure to Give Notice*

In Count Three of the amended complaint, TOC alleges that the BRA failed to give notice to TOC by certified or registered mail or otherwise, of its intent to take the portion of Mason Street, that this failure to provide notice violates *G.L.c. 79, § 5C*, and renders the taking invalid. Count Four sets out a related claim. There, TOC alleges that at the time it recorded the taking, the BRA failed to give notice to TOC that its property was being taken and that it was entitled to an award of damages, as required by *G.L.c. 79, § 7C*, and accordingly the taking is invalid.

A. Claim under G.L.c. 79, § 5C.

General Laws c. 79, § 5C provides in relevant part:

> ***HN20***[↑] No property shall be taken without the consent of the owner thereof . . . unless notice of intent to take such property is given to the owner of such property at least thirty days prior to the date of the actual taking . . .

HN21[↑] While the section requires notice to property

[34] According to James McGee, a staff member of the BRA, the reason for proposing the demonstration project was that the BRA contemplated the project would involve taking a portion of Mason Street, and was not willing to purchase the entire Opera House and associated property as well as some or all of Mason Street and then transfer the entire project to TMG. (McGee deposition, pp. 48-49, 53-54.)

[35] It should be clear from this discussion that I conclude the plaintiff has no basis on which to seek yet additional discovery with respect to Count One before summary judgment is granted. Cf. *Commonwealth v. Fall River Motor Sales, Inc., 409 Mass. 302, 307-08, 565 N.E.2d 1205 (1991)*.

owners, it does not specify what type of notice, and also does not provide **[*67]** that an absence of notice invalidates a taking. TOC has not cited a case, and none was found, holding that a failure to give notice to a property owner in advance of an eminent domain taking invalidates it. Moreover, as the defendants point out, the record contains a great deal of evidence indicating that representatives of TOC had plenty of notice that the BRA intended to take a portion of Mason Street. The record contains a letter from an attorney with the firm representing TOC that was apparently faxed to the BRA on the date (August 10, 2000) the board voted to give notice of intent to take a portion of Mason Street, and the letter reflects knowledge that this vote was scheduled to be held that day. (A.R., vol. 1, pp. 56, 59.) Beyond this letter, it is clear that before and after August 10, representatives of TOC were meeting with representatives of the BRA and TMG to discuss ways to reduce the portion of Mason Street that would be taken, to deal with access to TOC's loading docks on Mason Street, and other related topics. (See, e.g., A.R., vol. 6, pp. 1716-28, 1667.) No reasonable inference from the record can be drawn other than TOC had actual prior notice of the intent of the **[*68]** BRA to take a portion of Mason Street. Summary judgment will be granted to the defendants on Count Three.

B. Claim under G.L.c. 79, § 7C.

Section 7C of c. 79 reads as follows:

> ***HN22***[↑] Immediately after the right to damages becomes vested, the board of officers who have made a taking under this chapter shall give notice thereof to every person, including every mortgagee of record, whose property has been taken or who is otherwise entitled to damages on account of such taking. Such notice shall be in writing and shall describe in general terms the purpose and extent of the taking, and shall state the amount of damages, if any, awarded for such taking and the time and place at which he may obtain payment hereof, or, if no damages have been awarded, the time within which he may petition for an award of the same, and the time within which he may petition the superior court to determine his damages under section fourteen. Such notice may be served by personal service, or by leaving an attested copy thereof at the last and usual place of abode of the person to be notified if he is a resident of the commonwealth, by any person authorized to serve civil process **[*69]** or notice may be given to persons within or without the commonwealth, by registered mail or other suitable means. Failure to give notice shall not affect the time within which a petition for damages may be filed except as provided in section sixteen.

There is no dispute that the BRA did not provide written notice in the form set out in this section to TOC, presumably because the BRA did not, and (except for purposes of this summary judgment motion) does not agree that TOC owns any portion of Mason Street. In any event, I assume at this juncture that the statutory notice to TOC was required. Nonetheless, as the defendants argue, failure to provide such notice does not constitute grounds to invalidate the taking. See, e.g., *Grove Hall Sav. Bank v. Dedham, 284 Mass. 92, 94, 187 N.E. 182 (1933)*; *Merrymount Co. v. Metropolitan District Comm'n, 272 Mass. 457, 464-65, 172 N.E. 593 (1930)*. See also *Kahler v. Marshfield, 347 Mass. 514, 517, 198 N.E.2d 647 (1964)*.

TOC contends that these cases deal with a predecessor statute to *§ 7C*, *G.L.c. 79, § 8* (repealed by St. 1964, c. 579, *§ 4*), which expressly provided that failure to provide notice would not affect **[*70]** the validity of the proceedings, a clause not included in *§ 7G* itself. The absence of this express language is not dispositive. What the cited cases make implicitly if not expressly clear is ***HN23***[↑] that the purpose of the statutory notice is to ensure that property owners learn of a taking so that they may exercise their right to compensation for the value of the property so taken within the statutory time allotted. See generally *Appleton v. Newton, 178 Mass. 276, 282, 59 N.E. 648 (1901)* (considering and affirming the constitutionality of an eminent domain statute that contained no provision for written or individualized notice to property owners). This same purpose is reflected in the last sentence of *§ 7C* quoted above. In this case, TOC obviously has received timely notice of the taking for these purposes, as its amended complaint contains two counts seeking damages on account of the taking. (Amended complaint, Counts Six and Seven.) As a matter of law, TOC cannot prevail on its claim that the taking of a portion of Mason Street is invalid for lack of notice under *G.L.c. 79, § 7C*. [36]

[36] I also agree with the defendants that the record reflects TOC is not reasonably likely to be able to prove it did not receive actual notice of the taking, and actual notice is sufficient. See *Cann v. Commonwealth, 353 Mass. 71, 76-77, 228 N.E.2d 67 (1967)*.

[*71] *Count Five: Claim for Certiorari Review.*

In Count Five, TOC alleges that the BRA's designation of the Opera House project, including a portion of Mason Street, as a demonstration project under G.L.c. 121B, § 46(f), was an abuse of discretion, arbitrary and capricious, and based on errors of law. TOC appropriately brings this claim under the certiorari statute, G.L.c. 249, § 4. Cf. Boston Edison Co. v. Boston Redevelopment Auth., supra, 374 Mass. at 59 n. 15. I agree with the defendants that this claim is not timely.

HN24[↑] General Laws c. 249, § 4, provides that actions in the nature certiorari "to correct errors in proceedings which are not according to the course of the common law, which proceedings are not otherwise reviewable by motion or by appeal," are to be "commenced within sixty days next after the proceeding complained of." The "proceeding complained of" here is the determination by the BRA to approve TMG's application for a demonstration project. The BRA voted to do so on March 30, 2000. TOC did not file its complaint until June 15, 2001, almost fifteen months later. Even if **[*72]** one assumes that the "proceeding complained of" did not actually complete itself until the BRA voted to issue the notice of taking of the portion of Mason Street on October 12, 2000, or even until the notice of taking was recorded on November 8, 2000, still TOC's complaint is too late by many months. See Cumberland Farms, Inc. v. Montague Economic Development & Industrial Corp., supra, 38 Mass.App.Ct. 615. [37] See also Raso v. Lago, 958 F. Supp. 686, 695-96 (D.Mass. 1997), affirmed, 135 F.3d 11, cert. denied., *525 U.S. 811, 119 S. Ct. 44, 142 L. Ed. 2d 34 (1998)*. See generally, e.g., Committee for Public Counsel Services v. Lookner, 47 Mass.App.Ct. 833, 835, 716 N.E.2d 690 (1996); Rosenfeld v. Board of Health of Chilmark, 27 Mass.App.Ct. 621, 626, 541 N.E.2d 375 (1989).

[*73] TOC responds that in fact the time for bringing this claim for certiorari review has not run because the taking itself should have taken place under G.L.c. 121B, § 47, and did not. Section 47 applies to eminent domain takings that an urban renewal agency may make while it is preparing an urban renewal plan. In this case, the BRA was not preparing an urban renewal plan relating to the Opera House project, and for reasons discussed above, was not obligated to. Thus, the BRA did not, and was not required to, effect the taking of the Mason Street parcel under c. 121B, § 47; it was free to proceed under § 46(f) .TOC has not met the sixty-day limitation period applicable to its claims. The defendants are entitled to summary judgment on Count Five.

ORDER

For the foregoing reasons, the motions for partial summary judgment of the defendant Boston Redevelopment Authority and the defendant-intervener Theater Management Group, Inc. are *allowed.* Counsel for the parties are to contact the clerk of this session to schedule a status conference.

[*74] Margot Botsford

Justice of the Superior Court

Dated: September 23, 2002

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[37] This was a case challenging a plan for an economic development project established under a related statute, G.L.c. 121C. The court states: "A person whose land has been taken by eminent domain does, indeed, have three years from the time that the right to damages has vested to contest the lawfulness of a taking under G.L.c. 79 . . . The avenues of challenge may not, however, include attacks on the underlying planning process that may have led to the authorization of the taking and the order of taking. If that process is to be contested as so flawed as to be unlawful, the challenge must be made within the time limitations applicable to review in the nature of certiorari." Cumberland Farms, Inc. v. Montague Economic Development & Industrial Corp., 38 Mass.App.Ct. 615, 616, 650 N.E.2d 811 (1995).

of chapter eighty-nine of the General Laws, and sections three A, three B, three C, six, seven, nine, ten, eleven, twelve, thirteen, fourteen, fourteen B, sixteen, the first sentence of section seventeen, sections twenty and twenty A, the first sentence of section twenty-one, sections twenty-three, twenty-four, twenty-five and twenty-six of chapter ninety of the General Laws. *Approved August 9, 1955.*

Chap. 654 AN ACT RELATIVE TO URBAN RENEWAL PROJECTS.

Be it enacted, etc., as follows:

G. L. (Ter. Ed.), 121, § 26, etc., amended.

SECTION 1. Section 26 of chapter 121 of the General Laws is hereby amended by striking out the two paragraphs added by section 2 of chapter 643 of the acts of 1954.

G. L. (Ter. Ed.), 121, § 26I, etc., amended.

SECTION 2. Said chapter 121 is hereby further amended by striking out section 26I, as most recently amended by section 2 of chapter 668 of the acts of 1953, and inserting in place thereof the following section: — *Section 26I. Designation as Housing Authority Law.* — This section and the forty-six following sections shall be known and may be cited as the Housing Authority Law.

Housing Authority Law.

G. L. (Ter. Ed.), 121, § 26J, etc., amended.

SECTION 3. Section 26J of said chapter 121, as appearing in section 1 of chapter 574 of the acts of 1946, is hereby amended by striking out, in line 3, as amended by section 3 of said chapter 668, the letters "VV" and inserting in place thereof the letters: — BBB.

G. L. (Ter. Ed.), 121, § 26WW, stricken out and new §§ 26 WW–26ZZ, 26AAA–26CCC, added.

SECTION 4. Said chapter 121 is hereby further amended by striking out section 26WW, inserted by section 1 of said chapter 668, and inserting in place thereof the following: — PART VIII. URBAN RENEWAL PROJECTS. *Section 26WW. Legislative Declaration of Necessity.* It is hereby declared (*a*) that there exists in certain cities and towns in this commonwealth substandard, decadent or blighted open areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the commonwealth, and the declarations heretofore made in the housing authority law with respect to such areas are hereby reaffirmed; (*b*) that, while certain of such areas, or portions thereof, may require acquisition and clearance as provided in other parts of the housing authority law because the state of deterioration may make impracticable the reclamation of such areas or portions by conservation or rehabilitation, others of such areas, or portions thereof, are in such condition that they may, through the means provided in sections twenty-six XX to twenty-six BBB, inclusive, be conserved or rehabilitated in such a manner that the conditions and evils hereinbefore enumerated may be alleviated or eliminated; and (*c*) all powers conferred by said sections twenty-six XX to twenty-six BBB, inclusive, are for public uses and purposes for which public money may be expended and said powers exercised; and the necessity in the public interest for the provisions of said sections twenty-six XX to

Urban renewal projects, necessity of.

twenty-six BBB, inclusive, is hereby declared as a matter of legislative determination.

Initiation of urban renewal program.

Section 26XX. Initiation of Urban Renewal Program. — Sections twenty-six YY to twenty-six BBB, inclusive, shall not take effect or be operative in any city or town until, in the case of a city having a Plan D or Plan E charter, the city manager with the approval of the city council, in the case of any other city, the mayor with the approval of the city council, and in the case of a town, an annual or special town meeting, shall have determined that there exists in such city or town the need for an urban renewal program or programs therein.

Urban renewal projects.

Section 26YY. Urban Renewal Projects. — Urban renewal projects shall be planned, undertaken and carried out in a city or town by the redevelopment authority thereof, if such an authority has been organized, otherwise by the housing authority thereof. Urban renewal projects may include undertakings and activities for the elimination (and for the prevention of the development or spread) of substandard, decadent or blighted open areas, and may involve any work or undertaking for such purpose constituting a land assembly and redevelopment project or any rehabilitation or conservation work or any combination of such undertaking or work. As used in sections twenty-six XX to twenty-six BBB, inclusive, "rehabilitation or conservation work" may include the restoration and renewal of a substandard, decadent or blighted open area, or portion thereof, in accordance with an urban renewal plan by (1) carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements; (2) acquisition by gift or purchase or by eminent domain of real property and demolition, removal or rehabilitation of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds and other improvements necessary for carrying out the objectives of the urban renewal project; and (4) the disposition, for uses in accordance with the objectives of the urban renewal project, of any property or part thereof acquired in the area of such project; provided, that such disposition shall be in the manner prescribed in the housing authority law for the disposition of property in a land assembly and redevelopment project area.

Urban renewal plan.

Section 26ZZ. Urban Renewal Plan. — Any urban renewal project undertaken pursuant to the preceding section shall be undertaken in accordance with an urban renewal plan for the area of the project. As used in sections twenty-six YY to twenty-six BBB, inclusive, an "urban renewal plan" shall be construed to mean a plan, as it exists from

time to time, for an urban renewal project, which plan (1) shall conform to the general plan for the municipality as a whole, and (2) shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements and rehabilitation as may be proposed to be carried out in the area of the urban renewal project, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements. No urban renewal project shall be undertaken until the urban renewal plan therefor has been submitted to, and approved by, the housing board; and no urban renewal plan shall be submitted to the housing board unless the same has been approved by the city manager with the approval of the city council in the case of a city having a Plan D or Plan E charter, in the case of any other city, by the mayor with the approval of the city council or the selectmen of a town after due notice and a public hearing.

The housing board shall not approve any urban renewal plan unless the planning board established under the provisions of section seventy or eighty-one A of chapter forty-one for the city or town where the project is located, shall have found and the housing board shall have concurred in such finding, or, if no planning board exists in such city or town, unless the division of planning in the department of commerce shall have found and the housing board shall have concurred in such finding that the urban renewal plan is based upon a local survey and conforms to a comprehensive plan for the locality as a whole. The housing board shall likewise not approve any urban renewal plan unless it shall have found (*a*) the project area would not by private enterprise alone, and without the aid sought from the federal government or other subsidy, be made available for urban renewal; (*b*) the proposed land uses and building requirements in the project areas in the locality where the project area is located will afford maximum opportunity to privately financed urban renewal consistent with the sound needs of the locality as a whole; (*c*) the financial plan is sound; (*d*) the project area is a substandard, decadent or blighted open area; and (*e*) the urban renewal plan is sufficiently complete, as required by this section. The housing board shall, within thirty days after submission of the plan, give written notice to the redevelopment or housing authority of its decision with respect to such plan. If the housing board shall disapprove any such plan, it shall state in writing in such notice its reasons for disapproval. A plan which has not been approved by the housing board when submitted to it may be again submitted to it with such modifications as are necessary to meet its objections.

Anything in this section to the contrary notwithstanding,

when the location of a proposed urban renewal project has been determined, the redevelopment or housing authority may, without awaiting the approval of the housing board, proceed, by option or otherwise, to obtain control of such property within the urban renewal project area as is necessary to be acquired by the redevelopment or housing authority to carry out the urban renewal plan; but it shall not, without the approval of the housing board, unconditionally obligate itself to purchase or otherwise acquire any such property.

Powers regarding urban renewal.

Section 26AAA. Powers with Respect to Urban Renewal. — A redevelopment or housing authority proceeding under sections twenty-six YY to twenty-six BBB, inclusive, shall have all the powers necessary or convenient to undertake and carry out urban renewal plans and urban renewal projects, including power to acquire and dispose of property, to issue bonds and other obligations, to borrow and accept grants from the federal government or other sources, and to exercise the other powers which the housing authority law confers on a housing or redevelopment authority with respect to land assembly and redevelopment projects; provided, however, that nothing herein contained shall in any way impair or limit the power or authority of any state or municipal officer, board or commission with respect to the enforcement of any law, ordinance, by-law or regulation. In connection with the planning and undertaking of any urban renewal plan or urban renewal project, the redevelopment or housing authority and the city or town and all public and private officers, agencies and bodies shall have all the rights, powers, privileges and immunities which they have with respect to a land assembly and redevelopment plan or a land assembly and redevelopment project, in the same manner as though all of the provisions of the housing authority law applicable to a land assembly and redevelopment plan or a land assembly and redevelopment project were applicable to an urban renewal plan or urban renewal project; provided, that for such purpose the words "land assembly and redevelopment" as used in the housing authority law, except in section twenty-six J, shall be construed to include "urban renewal". In addition to the surveys and plans which an authority is otherwise authorized to make, a redevelopment or housing authority is hereby specifically authorized to make (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, and (ii) plans for the enforcement of laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition or removal of buildings and improvements. Such authority is further authorized to develop, test and report methods and techniques, and carry out demonstrations for the prevention and the elimination of slums and urban blight.

Assistance to urban renewal

Section 26BBB. Assistance to Urban Renewal. — Any

city or town or other public body is hereby authorized, without limiting any provision in section twenty-six AAA, to do any and all things necessary to aid and co-operate in the planning and undertaking of an urban renewal project in the area in which such city or town or public body is authorized to act, including the furnishing of such financial and other assistance as the city or town or public body is authorized by the housing authority law to furnish for or in connection with a land assembly and redevelopment plan or project. A redevelopment or housing authority is hereby authorized to delegate to a city or town or other public body or to any board or officer of such city, town or other public body any of the powers or functions of the authority with respect to the planning or undertaking of an urban renewal project in the area in which such city, town or other public body is authorized to act, and such city, town or other public body or any board or officer of such city, town or other public body is hereby authorized to carry out or perform such powers or functions for the authority. Any public body is hereby authorized to enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with any other public body or bodies respecting action to be taken pursuant to any of the powers granted by sections twenty-six YY to twenty-six BBB, inclusive, including the furnishing of funds or other assistance in connection with an urban renewal plan or urban renewal project.

A redevelopment or housing authority, to the greatest extent it determines to be feasible in carrying out the provisions of sections twenty-six YY to twenty-six BBB, inclusive, shall afford maximum opportunity, consistent with the sound needs of the city or town as a whole, for the rehabilitation or redevelopment of substandard, decadent or blighted open areas by private enterprise.

PART IX. EFFECT OF PARTIAL INVALIDITY.

Separability of provisions.

Section 26CCC. Separability of Provisions. — The provisions of sections twenty-six I to twenty-six BBB, inclusive, are hereby declared to be severable and if any such provision or the application of such provision to any person or circumstances shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions of said sections or the application of such provisions to persons or circumstances other than those as to which it is held invalid. It is hereby declared to be the legislative intent that said sections would have been adopted had such invalid or unconstitutional provisions not been included therein.

G. L. (Ter. Ed.), 121A, § 7A, etc., amended.

SECTION 4A. Section 7A of chapter 121A of the General Laws, inserted by section 3 of chapter 574 of the acts of 1946, is hereby amended by striking out the sentence

and inserting in place thereof the following sentence: — A corporation organized under section three or an insurance company or a savings bank or group of savings banks operating under this chapter may purchase or lease from a housing authority, redevelopment authority, municipality or other public body real estate acquired by such authority, municipality or public body for land assembly and redevelopment or urban renewal purposes under chapter one hundred and twenty-one, upon such terms and conditions, consistent with this chapter, as shall be approved by the housing board and may erect and maintain a project upon the land so acquired. Acquisition of certain sites from housing authorities.

SECTION 5. The provisions of this act shall be construed to be in addition to and supplementary of the powers conferred by other provisions of the law, including other provisions of the housing authority law; and nothing in this act shall be construed to limit the power of housing authorities or redevelopment authorities to carry out low rent housing projects or land assembly and redevelopment projects pursuant to any provision of the housing authority law.

Approved August 9, 1955.

AN ACT AUTHORIZING AND DIRECTING THE METROPOLITAN DISTRICT COMMISSION TO MAKE IMPROVEMENTS TO FELLSMERE POND IN THE CITY OF MALDEN. *Chap.* 655

Be it enacted, etc., as follows:

The metropolitan district commission is hereby authorized and directed to construct a water line to Fellsmere pond, located on the west side of Fellsway East in the city of Malden for the purpose of feeding water to said pond in order to maintain a proper level thereat and to protect public health and the fishlife therein. The said commission may make such surveys essential for said purposes and may expend such sums as may be appropriated therefor.

The said commission is hereby authorized to enter into such agreements, with the city of Malden or others, as may be essential for the purposes of this act; provided that the commission shall not be obligated to furnish water to said pond to replace water withdrawn by property owners or others having water rights with reference to said pond.

Approved August 9, 1955.

AN ACT RELATIVE TO THE ESTABLISHMENT OF METROPOLITAN OR REGIONAL PLANNING DISTRICTS WITHIN THE COMMONWEALTH. *Chap.* 656

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for the establishment of regional planning districts within the commonwealth in order to promote and co-ordinate the orderly development of certain areas therein, therefore it is hereby Emergency preamble.

Chap. 750. AN ACT AUTHORIZING THE ISSUANCE TO DAN BARKAI, A CITIZEN OF THE STATE OF ISRAEL, OF A SPECIAL PERMIT TO OWN OR POSSESS FIREARMS.

Be it enacted, etc., as follows:

Notwithstanding the provisions of section one hundred and thirty-one H of chapter one hundred and forty of the General Laws to the contrary, the commissioner of public safety may issue a special permit to Dan Barkai, a citizen of the state of Israel and the Israeli national free pistol champion, currently residing in the commonwealth, to own or have in his possession or under his control firearms for the purpose of engaging in practice for the forthcoming world small arms championship competition to be held in the United States in the year nineteen hundred and seventy, in which he will represent his native country. Said permit shall be subject to such conditions and restrictions as said commissioner may determine. *Approved August 20, 1969.*

Chap. 751. AN ACT RECODIFYING AND REVISING THE HOUSING AND URBAN RENEWAL LAWS.

Be it enacted, etc., as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 121A the following chapter:—

CHAPTER 121B.

HOUSING AND URBAN RENEWAL.

Section 1. The following words, whenever used in this chapter shall, unless a different meaning clearly appears from the context, have the following meanings:—

"Acquisition cost", the amount prudently required to be expended by an operating agency in acquiring a housing or clearance project.

"Blighted open area", a predominantly open area which is detrimental to the safety, health, morals, welfare or sound growth of a community because it is unduly costly to develop it soundly through the ordinary operations of private enterprise by reason of the existence of ledge, rock, unsuitable soil, or other physical conditions, or by reason of the necessity for unduly expensive excavation, fill or grading, or by reason of the need for unduly expensive foundations, retaining walls or unduly expensive measures for waterproofing structures or for draining the area or for the prevention of the flooding thereof or for the protection of adjacent properties and the water table therein or for unduly expensive measures incident to building around or over rights-of-way through the area, or for otherwise making the area appropriate for sound development, or by reason of obsolete, inappropriate or otherwise faulty platting or subdivision, deterioration of site improvements or facilities, division of the area by rights-of-way, diversity of ownership of plots, or inadequacy of transportation facilities or other utilities, or by reason of tax and special assessment delinquencies, or because there has been a substantial change in business or economic conditions or practices, or an abandonment or

cessation of a previous use or of work on improvements begun but not feasible to complete without the aids provided by this chapter, or by reason of any combination of the foregoing or other condition; or a predominantly open area which by reason of any condition or combination of conditions which are not being remedied by the ordinary operations of private enterprise is of such a character that in essence it is detrimental to the safety, health, morals, welfare or sound growth of the community in which it is situated.

"Clearance project", the demolition and removal of buildings from any substandard, decadent or blighted open area by an operating agency in accordance with subsection (*d*) of section twenty-six.

"Community renewal program", any planning work or other undertaking (1) to identify substandard, decadent, and blighted open areas and other deteriorated or deteriorating areas, (2) to measure the nature and degree of blight and blighting factors within such areas, (3) to determine the financial, relocation, and other resources needed and available to restore and renew such areas, (4) to identify potential project areas and, where feasible, types of action proposed within such areas, and (5) scheduling or programming of urban renewal projects and other renewal activities in the community.

"Commissioner", the commissioner of community affairs.

"Decadent area", an area which is detrimental to safety, health, morals, welfare or sound growth of a community because of the existence of buildings which are out of repair, physically deteriorated, unfit for human habitation, or obsolete, or in need of major maintenance or repair, or because much of the real estate in recent years has been sold or taken for nonpayment of taxes or upon foreclosure of mortgages, or because buildings have been torn down and not replaced and under existing conditions it is improbable that the buildings will be replaced, or because of a substantial change in business or economic conditions, or because of inadequate light, air, or open space, or because of excessive land coverage or because diversity of ownership, irregular lot sizes or obsolete street patterns make it improbable that the area will be redeveloped by the ordinary operations of private enterprise, or by reason of any combination of the foregoing conditions.

"Department", the department of community affairs.

"Elderly persons of low income", persons having reached the age of sixty-five or over whose annual net income is less than the amount necessary to enable them to maintain decent, safe and sanitary housing.

"Families of low income", families and persons whose net annual income is less than the amount necessary to enable them to obtain and maintain decent, safe and sanitary housing.

"Federal government", the United States of America, and any agency or instrumentality corporate or otherwise of the United States of America.

"Federal legislation", any legislation of the Congress of the United States relating to federal assistance for urban renewal, clearance of substandard, decadent or blighted open areas, city or regional planning, rehabilitation, code enforcement, housing, relocation or any related matters, and any regulations authorized thereunder.

"Housing authority", a public body politic and corporate created pursuant to section three or corresponding provisions of earlier laws.

"Housing project", such projects for housing as a housing authority is authorized to undertake under sections twenty-five to thirty-three, inclusive.

"Low rent housing", decent, safe and sanitary dwellings within the financial reach of families or elderly persons of low income, and developed and administered to promote service ability, efficiency, economy and stability; together with all necessary appurtenances of such dwellings.

"Low rent housing project", (1) a clearance project; or (2) any work or undertaking to provide decent, safe and sanitary dwellings, apartments or other living accommodations for families of low income, which work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient and desirable appurtenances, public or private ways, sewers, water supply, parks, site preparation or improvement, or administrative, community, health, recreational, welfare, or other facilities; or (3) the purchase of, or acquisition, otherwise than by eminent domain, of the right to use, completed dwelling units which have been recently constructed, reconstructed or remodeled (whether condominium units, individual buildings part of a larger development, or a portion of the units in a multifamily development); or (4) any combination of the foregoing. Such a project may include the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and other work performed in connection therewith, but construction activity in connection with a project may be confined to the reconstruction, remodeling or repair of existing buildings.

"Mayor", the city manager of the city in all cities having a Plan D or Plan E charter and the duly elected mayor of the city in all other cities. The mayor is hereby designated as the chief executive of the locality for purposes of any approval or action of such officer required by federal legislation.

"Municipal officers", in the case of all cities, the city council with the approval of the mayor, and in the case of all towns, the board of selectmen with the approval of the town manager, if any. The municipal officers are hereby designated as the local governing body for purposes of any approval or action of such body required by federal legislation.

"Operating agency", a housing authority or redevelopment authority.

"Redevelopment authority", a public body politic and corporate created pursuant to section four or corresponding provisions of earlier laws.

"Relocation payments", voluntary payments whether or not required by federal legislation made by an operating agency as reimbursement or compensation for the reasonable moving expenses necessarily incurred and any actual, direct loss of property, except good will or profit, suffered by individuals, families, business concerns and nonprofit organizations, resulting from displacement on or after August twelfth, nineteen hundred and sixty-five, if such displacement

is reasonably required to carry out an urban renewal plan or because of the acquisition of property by an operating agency.

Such relocation payments shall not include reimbursement or compensation for any expenses or losses for which reimbursement or compensation would be otherwise made, nor shall any person have any right of action for relocation payments, except as provided by federal legislation or chapter seventy-nine A.

"Relocation project", any work or undertaking for providing decent, safe and sanitary dwellings for persons or families displaced by any urban renewal project or other public improvement by the commonwealth or any city, town or other body politic and corporate of the commonwealth.

"Substandard area", any area wherein dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities or any combination of these factors, are detrimental to safety, health or morals.

"Urban renewal agency", the agency described in section nine.

"Urban renewal plan", a detailed plan, as it may exist from time to time, for an urban renewal project, which plan may comply with all requirements from time to time prescribed by federal legislation in order to qualify an urban renewal project for federal financial assistance and which plan shall (1) conform to the general plan for the municipality as a whole and be consistent with any definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational, educational and community facilities and other public improvements; (2) be sufficiently complete to indicate the boundaries of the area, such land acquisition, such demolition, removal, and rehabilitation of structures, and such redevelopment and general public improvements as may be proposed to be carried out within such area, zoning and planning changes, if any, and proposed land uses, maximum densities and building requirements; and (3) indicate or be accompanied by materials indicating the proposed method for relocation of persons and organizations to be displaced by the project and the availability of and means by which there will be provided dwelling units for such persons substantially equal in number to the number of dwelling units to be rendered temporarily or permanently uninhabitable as a result of carrying out the project. In any case where an educational institution or a hospital is located in or near an urban renewal project area, the urban renewal plan for such project, or a development plan prepared by the hospital or educational institution and approved by the urban renewal agency after due notice and public hearing, may include plans for the development of land, buildings and structures adjacent to or in the immediate vicinity of the project area acquired or to be acquired and redeveloped or rehabilitated by such educational institution for educational uses or by such hospital for hospital uses. Such plans may comply with all requirements of federal legislation as they may exist from time to time relating to noncash grant-in-aid credits for expenditures of such hospitals or educational institutions. After its approval by the urban renewal agency, as aforesaid, any development plan which is not part of an urban renewal plan shall be approved by the planning board, the municipal officers and the department in the same

manner as urban renewal plans, except that no further public hearing shall be required.

"Urban renewal project", a project to be undertaken in accordance with an urban renewal plan (1) for acquisition by an urban renewal agency of the land and all improvements thereon, if any, within a decadent, substandard or blighted open area covered by an urban renewal plan and for assembly or clearance by such agency of the land so acquired; or a project (2) for the elimination and for the prevention of the development or spread of a substandard, decadent or blighted open area covered by an urban renewal plan by means of rehabilitation or conservation work, which work may include the promulgation and enforcement of building and other codes within such area or the restoration and renewal of any such area or portion thereof, including the preservation, restoration or relocation of historical buildings, by carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements or by the acquisition by gift, purchase or eminent domain of land and all improvements thereon, if any, and demolition, removal, or rehabilitation of any such improvements whenever necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, provide land for needed public facilities or otherwise remove or prevent the spread of blight and deterioration; or a project (3) involving any combination of the foregoing types of project. "Urban renewal project" may also include the provision of financial and other assistance in the relocation of persons and organizations displaced as a result of carrying out a project, the installation, construction or reconstruction of public and private ways, public utilities and services, parks, playgrounds, off street parking lots, traffic or fire control and police communications systems and other like improvements necessary for carrying out the objectives of the urban renewal project, together with such site improvements as are necessary for the preparation of any sites for uses in accordance with the urban renewal plan, and making any land or improvements acquired in the area of the project available for redevelopment or rehabilitation by private enterprise or public charitable agencies, including sale, initial leasing or retention by the urban renewal agency itself for residential, recreational, education, hospital, commercial, industrial, public, charitable or other uses in accordance with the urban renewal plan. "Urban renewal project" may also include the construction by a housing authority of any of the buildings, for residential use, contemplated by the urban renewal plan and the repair, removal or rehabilitation by an operating agency of any of the buildings, structures or other improvements located in the area covered by the urban renewal plan and which, under such plan, are to be repaired, moved or rehabilitated. "Urban renewal project" may also include acquisition by any means other than eminent domain and not involving public expenses of land outside of but adjacent to or in the immediate vicinity of an urban renewal project to be developed for hospital or educational uses under the urban renewal plan, whenever such acquisition is for the purpose of making such land subject to the urban renewal plan and the hospital or

educational institution involved consents thereto. The term "redevelopment" shall include "development".

"Veteran", a person who has served in the active military or naval service of the United States at any time between September sixteenth, nineteen hundred and forty and July twenty-sixth, nineteen hundred and forty-seven, both dates inclusive, or at any time between April sixth, nineteen hundred and seventeen and November eleventh, nineteen hundred and eighteen, both dates inclusive, and a person who has served in the active armed forces of the United States at any time between June twenty-fifth, nineteen hundred and fifty and January thirty-first, nineteen hundred and fifty-five, both dates inclusive, or at any time between February first, nineteen hundred and fifty-five and the date of the termination of the Vietnam campaign as declared by proper federal authority, both dates inclusive, and who was discharged or released therefrom under conditions other than dishonorable. The word "veteran", as used herein, shall also include the wife, widow, mother or other dependent of such person.

Section 2. The provisions of this chapter are hereby declared to be severable and if any such provision or the application of such provision to any person or circumstances shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions of said chapter or the application of such provision to persons or circumstances other than those as to which it is held invalid. It is hereby declared to be the legislative intent that said chapter would have been adopted had such invalid or unconstitutional provisions not been included therein.

OPERATING AGENCIES.

Section 3. There is hereby created, in each city and town in the commonwealth, a public body politic and corporate to be known as the "Housing authority" of such city or town; provided, that no such authority shall transact any business or exercise any powers until the need for a housing authority has been determined and until a certificate of organization has been issued to it by the state secretary, both as hereinafter provided.

Whenever the municipal officers of a city or an annual or special town meeting shall determine that a housing authority is needed therein for the purpose of the clearance of substandard, decadent or blighted open areas or the provision of housing for families or elderly persons of low income or engaging in a land assembly and redevelopment project, including the preservation, restoration or relocation of historical buildings, it may by vote provide for the organization of such an authority. In determining the need for a housing authority, the city council or the town shall take into consideration the need for relieving congestion of population, the existence of substandard, decadent or blighted open areas or unsanitary or unsafe inhabited dwellings, and the shortage of safe or sanitary dwellings available for families or elderly persons of low income at rentals which they can afford.

Whenever a housing authority determines that there is no further need for its existence, that it has no property to administer, and that

all outstanding obligations of the authority have been satisfied, it may by a majority vote of the five members submit the question of its dissolution, in a town, to the voters at an annual town meeting or, in a city, to the municipal officers. If a city or town votes for such dissolution in accordance herewith and the department is satisfied of the existence of the facts required herein it shall so certify to the state secretary and said housing authority shall be dissolved forthwith subject to the applicable provisions of section fifty-one of chapter one hundred and fifty-five.

Section 4. There is hereby created, in each city and town in the commonwealth, a public body politic and corporate to be known as the "Redevelopment authority" of such city or town; provided, that no such authority shall transact any business or exercise any powers until the need for such an authority has been determined and a certificate of organization has been issued to it by the state secretary, both as hereinafter provided.

Whenever the municipal officers of a city, or the voters at an annual or special town meeting determine that there is a need for a redevelopment authority in such city or town for the purpose of engaging in urban renewal projects or other work under this chapter and that it is in the public interest that such an authority be organized in such city or town, a redevelopment authority shall be organized in such city or town.

Whenever a redevelopment authority determines that there is no further need for its existence, and that all outstanding obligations of the authority have been satisfied, it may by a majority vote of the five members submit the question of its dissolution, in a town, to the voters at an annual town meeting or, in a city, to the municipal officers. If a city or town votes for such dissolution in accordance herewith and the department is satisfied of the existence of the facts required herein, it shall so certify to the state secretary and said redevelopment authority shall be dissolved forthwith subject to the applicable provisions of section fifty-one of chapter one hundred and fifty-five.

Section 5. Every housing and redevelopment authority shall be managed, controlled and governed by five members, appointed or elected as provided in this section, of whom three shall constitute a quorum.

In a city, four members of a housing or redevelopment authority shall be appointed by the mayor subject to confirmation by the city council; provided, that, the members shall be appointed to serve for initial terms of one, two, four and five years, respectively.

In a town, four members shall be elected by the town; provided, that of the members originally elected at an annual town meeting, the one receiving the highest number of votes shall serve for five years, the one receiving the next highest number of votes, for four years, the one receiving the next highest number of votes, for two years, and the one receiving the next highest number of votes shall serve for one year; provided, that upon the initial organization of a housing or redevelopment authority, if a town so votes at an annual or special town meeting called for the purpose, four members of such an authority shall be appointed forthwith by the selectmen to serve only

until the qualification of their successors, who shall be elected at the next annual town meeting as provided above.

In a city or town, one member of a housing or redevelopment authority shall be appointed by the department for an initial term of three years.

Thereafter, as the term of a member of any housing or redevelopment authority expires, his successor shall be appointed or elected, in the same manner and by the same body, for a term of five years from such expiration. Membership in a housing or redevelopment authority shall be restricted to residents of the city or town.

In a city, one of the five members of a housing authority shall be a representative of organized labor. Vacancies, other than by reason of expiration of terms, shall be filled for the balance of the unexpired term, in the same manner and by the same body, except elected members in towns whose terms shall be filled in accordance with the provisions of section eleven of chapter forty-one. Every member, unless sooner removed, shall serve until the qualification of his successor.

As soon as possible after the qualification of the members of a housing or redevelopment authority the city or town clerk, as the case may be, shall file a certificate of such appointment, or of such appointment and election, as the case may be, with the department, and a duplicate thereof, in either case, in the office of the state secretary. If the state secretary finds that the housing or redevelopment authority has been organized and the members thereof elected or appointed according to law, he shall issue to it a certificate of organization and such certificate shall be conclusive evidence of the lawful organization of the authority and of the election or appointment of the members thereof.

Whenever the membership of an authority is changed by appointment, election, resignation or removal, a certificate and duplicate certificate to that effect shall be promptly so filed. A certificate so filed shall be conclusive evidence of the change in membership of the authority referred to therein.

Section 6. The mayor or city council or board of selectmen may make or receive written charges against, and the mayor with the approval of the city council, or the board of selectmen, as the case may be, may accept the resignation of, any member of a housing authority or redevelopment authority appointed or elected by such city or town or may, after hearing, remove any such member because of inefficiency, neglect of duty or misconduct in office provided that such member shall have been given, not less than fourteen days before the date set for such hearing, a copy in writing of the charges against him and written notice of the date and place of hearing to be held thereon, and at the hearing shall have been given the opportunity to be represented by counsel and to be heard in his defense. The mayor and city council or board of selectmen may also make or receive written charges against any member of a housing or redevelopment authority in such city or town appointed by the department and refer the same to the department which may proceed in the same manner as the mayor and city council or board of selectmen under the preceding sentence. Pending final action upon any such charges, the officer or

officers having the power to remove such member may temporarily suspend him, provided that they shall immediately reinstate him in office if they find such charges have not been substantiated, and may appoint a person to perform the duties of such suspended member until he is reinstated or until he is removed and his successor is qualified. In case of any such removal the removing authority shall forthwith deliver to the clerk of the city or town attested copies of such charges and of its findings thereon, and the clerk shall cause the same to be filed with the certificate and duplicate certificate required to be filed with the department and the state secretary under section five.

A member of a housing or redevelopment authority who ceases to be a resident of the city or town shall be removed upon the date of his change of residence by operation of law. A member of a housing authority who is a tenant in a housing project shall not participate in any decision relating to the project affecting his personal interest.

Section 7. A housing or redevelopment authority shall elect from among its members a chairman and a vice-chairman, and may employ counsel, an executive director who shall be ex officio secretary of the authority, a treasurer who may be a member of the authority and such other officers, agents and employees as it deems necessary or proper, and shall determine their qualifications, duties and compensation, and may delegate to one or more of its members, agents or employees such powers and duties as it deems necessary or proper for the carrying out of any action determined upon by it. So far as practicable, a housing or redevelopment authority shall make use of the services of the agencies, officers and employees of the city or town in which such authority is organized, and such city or town shall, if requested, make available such services, except, that in the city of Boston, the housing authority may contract with said city for the assignment of thirty-seven police officers of the police department of said city to police the buildings and grounds owned by said authority with the proviso that said authority shall reimburse said city for one third of the cost thereof.

A housing authority may compensate its members for each day spent in the performance of their duties and for such other services as they may render to the authority in connection with projects commenced prior to July first, nineteen hundred and sixty-five. Such compensation shall not exceed fifty dollars a day for the chairman and forty dollars a day for a member other than the chairman, provided that the total sum paid to all the members in any one month or year shall not exceed two per centum of the gross income of the housing authority during such month or year, respectively, nor shall the total sum paid in any year exceed twelve thousand five hundred dollars in the case of the chairman or ten thousand dollars in the case of a member other than the chairman. Such compensation shall be allocated by the housing authority among its various projects commenced prior to July first, nineteen hundred and sixty-five, in such manner and amounts as it deems proper. Members of a housing authority shall be allowed, or be reimbursed for, all expenses properly incurred by them within or without the city or town in the discharge of their duties. Such expenses shall be allocated by the housing

authority among its various projects in such manner and amounts as it deems proper.

For the purposes of chapter two hundred and sixty-eight A, each housing and redevelopment authority shall be considered a municipal agency and, without limiting the power of a city council or board of aldermen or board of selectmen to classify additional special municipal employees pursuant to said chapter, each member of such an authority, and any person who performs professional services for such an authority on a part-time, intermittent or consultant basis, such as those of architect, attorney, engineer, planner, or construction, financial, real estate or traffic expert, shall be considered a special municipal employee.

POWERS AND LIABILITIES OF OPERATING AGENCIES.

Section 8. The operating agencies having the powers and subject to the limitations provided in sections twenty-five to thirty-three, inclusive, shall be housing authorities.

Section 9. The operating agencies having the powers and subject to the limitations provided in sections forty-five to fifty-seven, inclusive, to be known as urban renewal agencies, shall be:—

(*a*) each redevelopment authority;

(*b*) each housing authority of a city or town in which no redevelopment authority has been organized; provided, however, that no housing authority shall initiate an urban renewal project until the municipal officers of a city or an annual or special town meeting shall have determined that there exists in such city or town a need for urban renewal;

(*c*) each housing authority of a city or town in which a redevelopment authority has been organized, but only with respect to projects initiated by such authority before the organization of a redevelopment authority and subject to section fifty-one.

Section 10. Unless otherwise particularly provided in sections fifty-eight and fifty-nine the operating agencies having the powers and subject to the limitations provided in sections fifty-eight and fifty-nine of this chapter shall be either housing authorities or urban renewal agencies, whichever may be designated for the purposes of the particular program by the municipal officers.

Section 11. Each operating agency shall have the powers and be subject to the limitations provided in sections one to sixteen, inclusive, shall have the powers necessary or convenient to carry out and effectuate the purposes of the relevant provisions of the General Laws and shall have the following powers in addition to those specifically granted in this chapter:—

(*a*) To sue and be sued; to have a seal; to have corporate succession;

(*b*) To act as agent of, or to cooperate with the federal government in any clearance, housing, relocation, urban renewal or other project which it is authorized to undertake;

(*c*) To receive loans, grants and annual or other contributions from the federal government or from any other source, public or private;

(*d*) To take by eminent domain under chapter seventy-nine or

chapter eighty A, or to purchase or lease, or to acquire by gift, bequest or grant, and hold, any property, real or personal, or any interest therein, found by it to be necessary or reasonably required to carry out the purposes of this chapter, or any of its sections, and to sell, exchange, transfer, lease or assign the same; provided, that in case of a taking by eminent domain under said chapter seventy-nine, the provisions of section forty of said chapter shall be applicable, except that the security therein required shall be deposited with the mayor of the city or the selectmen of the town in which the property to be taken is situated. Except as herein otherwise provided, the provisions of chapters seventy-nine and eighty A relative to counties, cities, towns and districts, so far as pertinent, shall apply to operating agencies, and the members of a housing or redevelopment authority shall act on its behalf under those chapters.

(*e*) To clear and improve any property acquired by it;

(*f*) To engage in or contract for the construction, reconstruction, alteration, remodeling or repair of any clearance, housing, relocation, urban renewal or other project which it is authorized to undertake or parts thereof;

(*g*) To make relocation payments to persons and businesses displaced as a result of carrying out any such project;

(*h*) To borrow money for any of its purposes upon the security of its bonds, notes or other evidences of indebtedness, and to secure the same by mortgages upon property held or to be held by it or by pledge of its revenue, including without limitation grants or contributions by the federal government, or in any other lawful manner, and in connection with the incurrence of any indebtedness to covenant that it shall not thereafter mortgage the whole or any specified part of its property or pledge the whole or any specified part of its revenues;

(*i*) To invest in securities legal for the investment of funds of savings banks any funds held by it and not required for immediate disbursement;

(*j*) To enter into, execute and carry out contracts with any person or organization undertaking a project under chapter one hundred and twenty-one A;

(*k*) To enter, with the approval of the mayor or board of selectmen and the department, into agreements with the federal government relative to the acceptance or borrowing of funds for any project it is authorized to undertake and containing such covenants, terms and conditions as the operating agency, with like approval, may deem desirable; provided, however, that nothing herein shall be construed to require approval by the mayor or selectmen or the department of requisition agreements and similar contracts between an agency and the federal government which are entered into pursuant to an agreement approved by them;

(*l*) To enter into, execute and carry out contracts and all other instruments necessary or convenient to the exercise of the powers granted in this chapter; and

(*m*) To make, and from time to time amend or repeal, by-laws, rules and regulations not inconsistent with pertinent rules and regulations of the department to govern its proceedings and effectuate the purposes of this chapter.

Section 12. Each contractor with an operating agency and each subcontractor shall comply with the applicable requirements of chapter one hundred and forty-nine as to wages and hours of labor and any other conditions relating to employment. The department of labor and industries shall enforce this paragraph and shall also have power to petition the court for injunction or other appropriate relief against any operating agency which fails to comply herewith.

An operating agency shall enter into a compact or compacts with the Social Security Board or take such other action as it may deem appropriate to enable its employees to come within the provisions and obtain the benefits of the Social Security Act. If the employees of such an agency shall come within the provisions of the Social Security Act, their employment shall be included in the term "employment" as used in sections one to seven, inclusive, of chapter one hundred and fifty-one A.

Except as provided in section twenty-nine of this chapter, the provisions of section fifty-one of chapter thirty-one and the rules made thereunder shall not apply to any officer, agent or employee of an operating agency or to any person employed on or in connection with any project of an operating agency.

Except as provided in sections twenty-eight and thirty all by-laws, ordinances and regulations of the city or town in which any such project lies relating to the construction of buildings, municipal planning, zoning and the protection of public health shall apply to every project of an operating agency located in such city or town.

Section 13. An operating agency shall be liable in contract or in tort in the same manner as a private corporation. The members, employees, officers and agents of an operating agency shall not be liable as such on its contracts or for torts not committed or directly authorized by them. The property or funds of an operating agency shall not be subject to attachment or to levy and sale on execution, but if such agency refuses to pay a judgment entered against it in any court of competent jurisdiction, the superior court, sitting within and for the county in which the agency is situated, may, by writ of mandamus, direct the treasurer of such agency to pay such judgment. The real estate of such an agency shall not be subject to liens under chapter two hundred and fifty-four, but the provisions of sections twenty-eight and twenty-nine of chapter one hundred and forty-nine shall be applicable to any construction work by such agencies.

An operating agency shall reimburse the Massachusetts Bay Transportation Authority and every railroad corporation for all reasonable costs and expenses incurred by said transportation authority or such railroad corporation to relocate such of their respective facilities as are required to be removed as part of a project being undertaken pursuant to this chapter by such operating agency and as are necessary for the continuance of the common carrier services performed by said transportation authority or such railroad corporation. "Facilities", as used in this paragraph, shall mean poles, tracks, switches, wires, conduits, cables, signals and structures and in addition thereto equipment appurtenant to any of the foregoing.

Section 14. An operating agency may obligate itself, in any contract with the federal government for a loan or the payment of annual

contributions authorized by section eleven, to convey to the federal government the project to which such contract relates, upon the occurrence of a substantial default with respect to the covenants, terms and conditions of such contract to which such agency is subject. Such contract may further provide that, in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the project in accordance with the terms of such contract; provided, that the contract shall require that, as soon as practicable, after the federal government is satisfied that all of the defaults on account of which it acquired the project have been remedied, and that the project will thereafter be operated in compliance with the terms of the contract, the federal government shall reconvey to such agency or its successor the project in the condition in which it then exists. The obligation of an operating agency under such contract shall be subject to specific enforcement by any court having jurisdiction, and, notwithstanding any other provision of the law, shall not be deemed to constitute a mortgage.

Section 15. The bonds, notes and certificates of indebtedness of an operating agency, in the absence of an express recital to the contrary on the face thereof, shall constitute negotiable instruments for all purposes. They may be payable from the income of the agency or constitute a general obligation thereof, may be sold at not less than par, at public or private sale, may mature at such time or times, may be secured in such manner, may provide for such rights and remedies upon their default, may contain such other covenants, terms and conditions not inconsistent with law, may be executed by such officers, and may be issued with or without the corporate seal, all as may be authorized either by vote of the agency or by the officer or officers to whom the power to determine any or all the matters set forth in this sentence may be expressly delegated by vote of such agency. The engraved or printed facsimile of the seal of an agency on its bonds, notes or certificates of indebtedness shall have the same validity and effect as if such seal were impressed thereon. Whenever a bond, note or certificate of indebtedness is required to bear the signatures of two or more officers, it shall be sufficient if the signature of any one of such officers upon such instrument is a written signature and the remaining signature or signatures are engraved, printed or stamped facsimile signatures; provided, that each officer whose facsimile signature appears on such instrument has, by a writing bearing his written signature and filed in the office of the secretary of the agency, authorized the officer whose written signature appears on such instrument to cause such facsimile to be placed thereon. The facsimile signature of any officer so engraved, printed or stamped thereon shall have the same validity and effect as his written signature.

The bonds, notes and certificates of indebtedness of an operating agency issued under this chapter and the interest thereon shall be exempt from taxation, with respect to principal and income. The bonds of such an agency issued under this chapter shall be legal investments for the deposits and the income derived therefrom of savings banks, for the trust funds of trust companies, for the capital and other funds of insurance companies, and for funds over which the commonwealth has exclusive control.

Section 16. The real estate and tangible personal property of an operating agency including houses constructed by a housing authority on private land in rural areas under the provisions of section twenty-seven shall be deemed to be public property used for essential public and governmental purposes and shall be exempt from taxation and from betterments and special assessments; provided, that in lieu of such taxes, betterments and special assessments, a city or town in which an operating agency holds real estate used or to be used in connection with such a project may determine a sum to be paid to the city or town annually in any year or period of years, such sum to be in any year not in excess of the amount that would be levied at the current tax rate upon the average of the assessed value of such real estate, including buildings and other structures, for the three years preceding the year of acquisition thereof, the valuation for each year being reduced by all abatements thereon.

Such a city or town may, however, agree with such an operating agency upon the payments to be made to the city or town as herein provided or such agency may make and such city or town may accept such payments, the amount of which shall not in either case be subject to the foregoing limitation. The last paragraph of section six and all of section seven of chapter fifty-nine shall, so far as apt, be applicable to payments under this section.

Nothing in this chapter shall be construed to prevent the taxation to the same extent and in the same manner as other real estate is taxed, of real estate acquired by an operating agency for an urban renewal project and sold by it, or of the leasehold interests and buildings and other structures belonging to private individuals or corporations on land acquired by it; provided, however, that real estate so acquired by an operating agency and sold or leased to an urban redevelopment corporation or other entity operating under chapter one hundred and twenty-one A, or to an insurance company or savings bank or group of savings banks operating under said chapter, shall be taxed as provided in said chapter and not otherwise.

MUNICIPAL POWERS AND LIABILITIES.

Section 17. No bond, note or other evidence of indebtedness executed or obligation or liability incurred by an operating agency shall be a debt or charge against the commonwealth or any political subdivision thereof other than such agency. Nothing in this chapter shall be construed to obligate the commonwealth, or any political subdivision thereof other than the applicable operating agency, or to pledge its credit, to any payment whatsoever to any operating agency or to any creditor or bondholder thereof, nor shall anything therein contained be construed as granting to any operating agency any exemption from taxation except as expressly provided therein or to render the commonwealth, or any political subdivision other than such agency liable for any indebtedness or liability incurred, acts done, or any omissions or failures to act, of any such agency.

Section 18. Whether or not an operating agency has been created therein any city or town may undertake, itself or by or through any department, board, agency, authority, or office of the city or town, or

by or through any operating agency, planning district, metropolitan district, or other public body any planning activities within such city or town for the preparation or completion of master or general plans, a workable program for development of the community, general neighborhood renewal plans, a community renewal project, any other planning study, project or program and a code enforcement project, including the voluntary or compulsory repair and rehabilitation of buildings and improvements, the enforcement of laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, and the provision and repair of streets, curbs, sidewalks, street lighting, tree planting and similar improvements in connection therewith and may authorize such department, board, agency, authority, office, operating agency, district or public body to act as the agent of such city or town in entering contracts for financial assistance for such purposes from the federal government or the commonwealth. Any such city or town may raise and appropriate or agree with such department, board, agency, authority, office, district, operating agency or public body or with the federal government or the commonwealth to raise and appropriate such sums as may be necessary for the purpose.

Section 19. Cities and towns may raise and appropriate money for the purpose of defraying the initial costs and annual administrative expenses of an operating agency authorized to be organized therein, including the expense of preparing any plans, studies, programs and surveys an operating agency is authorized to prepare and the expense of preparing plans in connection with one or more proposed projects.

Without limiting the generality of the foregoing, any city or town may from time to time appropriate or agree to appropriate money for the purpose of aiding in the preparation of plans and estimates needed to prepare applications for federal loans or grants and in the preparation of any other estimates, plans, orders of taking and contract documents in connection with any proposed or approved project. All moneys appropriated by a city or town under the preceding sentence shall be repaid by the operating agency to such city or town if said agency subsequently receives other moneys available for the purposes for which such moneys were appropriated, but otherwise such moneys need not be repaid.

All moneys appropriated under this section in aid of an operating agency or received by it from any source shall be paid to the treasurer of the agency or such other officer of the agency as may be authorized by it, and shall be disbursed by such treasurer or other officer, subject to accounting therefor as required by this chapter.

Section 20. A city or town in which an operating agency has been organized may raise and appropriate, or may borrow, or may agree with such agency or with the federal government or the commonwealth to raise and appropriate or to borrow, in aid of such agency, such sums as may be necessary for:—

(1) defraying all the development, acquisition and operating costs of a clearance, urban renewal, community renewal, relocation, rehabilitation or low-rent housing project within such city or town; or

(2) defraying such part of the development, acquisition and operating costs of any such project to which either the federal

government, pursuant to federal legislation, or any other source has rendered or has agreed to render financial assistance, as will not be met by loans other than temporary loans or by contributions or grants other than annual or other contributions and grants in the nature of reimbursement from the federal government or from any such other source; and for

(3) the making of relocation payments by such agency; and

(4) repaying any loss which the city or town has agreed to bear and which is incurred as a result of the early taking, acquisition or clearance of land not used for urban renewal purposes.

Section 21. Indebtedness authorized under section twenty shall be outside the limit of indebtedness prescribed in section ten of chapter forty-four, and shall be payable within twenty years and otherwise subject to sections sixteen to twenty-seven, inclusive, of said chapter forty-four, except that in the case of indebtedness authorized under clause (1) or clause (2) of section twenty, the first principal payment may be made within five years and the last within twenty-five years of the date of the bonds or notes issued for the Serial Loan. The total amount of indebtedness of any city or town outstanding at any one time under clause (3) of section twenty alone shall not exceed one half of one per cent, and under clauses (1), (2) and (4) combined of said section twenty shall not exceed five per cent, of its equalized valuation.

Section 22. So long as the emergency finance board, established under section one of chapter forty-nine of the acts of nineteen hundred and thirty-three, is in existence, no city or town shall, without the approval of said board, incur indebtedness for any of the purposes of this chapter which would cause the total amount of its indebtedness for such purposes then outstanding to exceed two and one half per cent of its equalized valuation. If said emergency finance board shall cease to exist, a commission consisting of the attorney general, the state treasurer and the director of the bureau of accounts in the department of corporations and taxation shall exercise the powers given to said emergency finance board by this section and section twenty-four. Said board or commission, as the case may be, shall hold a public hearing upon any matter submitted to it under this section if requested in writing to do so by twenty-five taxable inhabitants of such city or town within three days after the submission of such matter.

Section 23. For the purpose of complying with the conditions of federal legislation, or in lieu of a contribution, loan or grant in cash to an operating agency organized within its limits, or to aid and cooperate in the planning, construction or operation of any project of such an agency, a city or town, or the appropriate board or officer thereof on behalf of such city or town, may upon such terms, and with or without consideration, do or agree to do any or all of the following things, as such city, town, board or officer, as the case may be, may determine:—

(*a*) Sell, convey or lease any of its interests in any property, or grant easements, licenses or any other rights or privileges therein to such agency or to the federal government;

(*b*) Cause parks, playgrounds or schools, or water, sewer or drainage facilities, or any other public improvements which it is otherwise authorized to undertake, to be laid out, constructed or furnished adjacent to or in connection with a housing, clearance, relocation or urban renewal project;

(*c*) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon or discontinue, public ways and construct sidewalks, adjacent to or through a housing, clearance, relocation or urban renewal project;

(*d*) Adopt ordinances or by-laws under section twenty-five to thirty A, inclusive, of chapter forty or repeal or modify such ordinances or by-laws; establish exceptions to existing ordinances and by-laws regulating the design, construction and use of buildings; annul or modify any action taken or map adopted under sections eighty-one A to eighty-one J, inclusive, of chapter forty-one;

(*e*) Cause public improvements to be made and services and facilities to be furnished to or for the benefit of an operating agency for which betterments or special assessments may be levied or charges made, and assume or agree to assume such betterments, assessments or charges;

(*f*) Purchase and hold any of the bonds or notes of an operating agency and exercise all of the rights of a holder of such bonds or notes;

(*g*) Make available to an operating agency the services of its agencies, officers and employees;

(*h*) Cause private ways, sidewalks, footpaths, ways for vehicular travel, playgrounds, or water, sewer or drainage facilities and similar improvements to be constructed or furnished within the site of a project for the particular use of the project or of those dwelling therein;

(*i*) Enter into agreements with an operating agency, the term of which agreements may extend over the period of a loan to the operating agency by the federal government, respecting action to be taken by such city or town pursuant to any of the powers granted by this chapter; and

(*j*) Do any and all other things necessary or convenient to aid and cooperate in the planning, construction or operation of a housing, clearance, relocation or urban renewal project within its limits.

The entering of a contract under this section between a city or town and the federal government or between a city or town and an operating agency shall not be subject to any provision of law relating to publication or to advertising for bids.

Section 24. A city or town, in which the operating agency, pursuant to section forty-seven, proposes to take, acquire or clear land constituting the whole or part or parts of an area which the agency has determined to be a substandard, decadent or blighted open area and for which such agency is preparing an urban renewal plan, may enter into an agreement with the operating agency to bear any loss that may arise as a result of such taking, acquisition or clearance in the event that such land is not used for urban renewal purposes; provided, however, that no city or town shall, without first obtaining a finding

of financial feasibility from the emergency finance board described in section twenty-two, or the commission authorized to succeed to the function of said board under said section, enter into any agreement under this paragraph which would cause the losses agreed to be borne by such city or town under all agreements under this paragraph in effect at any one time, according to the estimates of costs upon which such agreement or agreements are originally based, to exceed four per cent of its equalized valuation.

HOUSING PROGRAMS.

Section 25. It is hereby declared that substandard and decadent areas exist in certain portions of the commonwealth, and that there is not in the commonwealth, within a reasonable distance of the principal centers of employment, an adequate supply of low-rent housing for families of low income; that in certain portions of the commonwealth decent, safe and sanitary housing cannot be provided for families of low income in rural areas at a cost which would warrant private enterprise in the locality or in the same general area to provide an adequate supply thereof; that this situation tends to cause an increase and spread of disease and crime and constitutes a menace to the health, safety, morals, welfare and comfort of the inhabitants of the commonwealth and is detrimental to property values therein; that this situation cannot readily be remedied by the ordinary operations of private enterprise; that a public exigency exists which makes the clearance of substandard or decadent areas and the provision of housing for persons of low income a public necessity; that the clearance of substandard and decadent areas and the provision of housing for persons of low income, or either, constitute a public use for which private property may be acquired by eminent domain and public funds raised by taxation may be expended; and the enactment of sections one to forty-four of this chapter is declared to be a public necessity.

Section 26. A housing authority shall have the following powers in addition to those set forth in section eleven or elsewhere in this chapter:—

(*a*) To make studies of housing needs and markets, including data with respect to population and family groups and their distribution according to income groups, the amount and quality of available housing and its distribution according to rentals and sales prices, employment, wages and other factors affecting housing needs and markets, and surveys and plans for housing related to community development, including desirable patterns for land use and community growth, and to make such studies, surveys and plans available to the federal government, the department and other state agencies, other operating agencies, the public and the building, housing and supply industries;

(*b*) To conduct investigations and disseminate information relative to housing and living conditions and any other matter deemed by it to be material in connection with any of its powers and duties;

(*c*) To determine what areas within its jurisdiction constitute substandard, decadent or blighted open areas;

(*d*) To prepare plans for the clearance of such decadent, substandard or blighted areas and to clear open areas whenever necessary or desirable to provide for the equivalent elimination of substandard buildings in accordance with section thirty-three provided that no housing authority in any city or town in which a redevelopment authority has been organized shall initiate such a clearance project without the approval of such redevelopment authority and the approval of the municipal officers of the city or town;

(*e*) To provide housing projects for families of low income;

(*f*) To provide projects or parts thereof for elderly persons of low income;

(*g*) To provide housing for families of low income in rural areas in accordance with provisions set forth in section twenty-seven;

(*h*) To undertake and provide relocation projects in order to house for a limited period families who are displaced by an urban renewal project or other public improvement involving the elimination of dwelling units whenever such project or public improvement is determined upon and it or an urban renewal agency finds that there exists in the city or town an acute shortage of housing and that there are no adequate means available for immediate relocation of persons and families displaced from that project area; and

(*i*) To lease, operate and, subject to section thirty-two establish or revise schedules of rents for any project or part thereof undertaken by it.

Section 27. If a housing authority organized in a city or town in which rural areas are located shall undertake the provision of housing for families of low income in such rural areas, it shall comply with the following provisions and shall have the following powers, in addition to others specifically granted in this chapter:—(i) The same preference shall be given to families of veterans as is provided in clause (*f*) of section thirty-two. (ii) So far as practicable, such housing shall consist of separate single-family houses. (iii) A housing authority which has undertaken housing in rural areas shall have the power to lease or sell houses erected or acquired by it, and, in case of sale, to impose such covenants, which shall run with the land if the housing authority so stipulates, regarding the land and the buildings thereon as it deems necessary to carry out the purposes of this chapter. In case of lease, the lessee shall have the option to purchase such house at any time during his occupancy thereof at the price designated in his lease. When any such option is exercised, the purchaser shall be given credit for payments made by him which were applied toward amortizing the cost of the house, and in case the lease with option to purchase, has been assigned to him by a previous lessee, such credit shall include such payments made by previous lessees. (iv) Until a purchaser makes full payment for a house constructed by a housing authority under this subsection the title to such house shall remain in the housing authority regardless of ownership of the land. (v) Provision for farm housing for families of low income shall be subject to the following conditions:—(1) Before housing is constructed on a farm, the United States department of agriculture, or the United States department of the interior in the case of farms included in reclamation projects of that department through such representatives as it may

designate shall certify that the net annual income of the farm, together with the nonfarm income of those to be housed, is less than the amount necessary to enable them otherwise to obtain and maintain decent, safe and sanitary housing and that the construction of a suitable type house on the farm is consistent with the respective programs of the department involved; (2) Based upon the normal earning capacity of the farm, as certified by the United States department of agriculture or department of the interior, the housing authority shall determine that the farm owner can meet at least the minimum payments required of him; (3) In developing standards as to what constitutes decent, safe and sanitary dwellings, the housing authority shall take into consideration the needs of the family for which such housing is to be used; (4) With respect to houses on farms, there shall, so far as practicable, be a system of variable payments so that in any year when there is below normal production or prices there may be an appropriate decrease that year in payment below the minimum otherwise required, but only to the extent that credits have been established as defined by the annual contributions contract through previous payments by the farm owner in excess of the minimum required payments. (vi) Provisions of nonfarm housing for families of low income in rural areas, with sufficient land for home gardens, shall be subject to the condition that the housing authority shall first determine that such housing will be so located that sources of employment will be accessible to the occupants thereof.

The department, with the approval of the municipal officers shall have all the powers of a housing authority under this section in order to provide housing for families of low income in any city or town where no housing authority exists. Upon the organization of a housing authority in such a city or town, all the rights, titles, powers, duties and obligations of a housing authority acquired or exercised by the department with respect to such housing shall immediately vest in such housing authority.

Section 28. Except as provided in section thirty with respect to projects leased from the federal government, every housing project shall be subject to all laws and all ordinances, by-laws and regulations of the city or town in which it lies, relating to the construction and repair of buildings, town planning, zoning and the protection of the public health; provided, that with the approval of the department and the supervisor of plans of the department of public safety, any building in a housing project of not more than three stories in height which is divided into two or more sections by fire division separations in accordance with any special law relative thereto or with any ordinance, by-law or regulation of the city or town in which it lies, which contains an enclosed stairway in each section extending from the roof to the ground directly accessible to the occupants of each dwelling unit therein, which is built of fireproof or fire resistive construction as defined by any special law relative thereto or by any ordinance, by-law or regulation of the city or town in which it lies, and which, together with the other buildings on the same project, does not occupy more than thirty per centum of the area thereof, may be designed, erected and maintained with only one means of egress from a dwelling unit to a stairway or public corridor; provided, that when

any room in a dwelling unit is more than forty feet from such means of egress, there shall be two egresses from such dwelling unit located at points as widely separated from one another as may be reasonably feasible, with not more than four dwelling units above the second story in each section, with exterior egress doors not less than three feet in width, although such dwelling units contained in the aggregate more than eight rooms and the only means of egress is as above described; and provided, further, with the approval of the department, and the supervisor of plans of the department of public safety, any building in a housing project or any section of such a building which is set apart by a fire wall or fire walls of more than three stories in height, which is of fireproof or fire resistive construction in accordance with any special law relative thereto, or with any ordinance, by-law or regulation of the city or town in which it lies, and which is provided with two enclosed stairways isolated from each other by fire division separations in accordance with any special law relative thereto or with any ordinance, by-law or regulation of the city or town in which it lies, or as widely separated from each other as may be reasonably feasible, and which, if of more than six stories in height, is equipped with automatic sprinklers installed in cellars, basements, workrooms, shops, storerooms and kitchens, may be designed, erected and maintained with only one means of egress from each dwelling unit to a public corridor; provided, that when any room of a dwelling unit is more than forty feet from such means of egress, there shall be two egresses from such dwelling unit located at points as widely separated from one another as may be reasonably feasible; and provided, further, that in buildings three or more stories in height, stairs and landings, and doors connecting public corridors and stair enclosures, when serving not more than three hundred persons, shall be not less than three feet in width between walls or between wall and balustrades with stairs equipped with a handrail on one side, although the only means of egress and fire extinguishing apparatus are as above described.

Section 29. Each housing authority shall keep an accurate account of all its activities and all its receipts and expenditures and shall annually in the month of January make a report thereof to the department, to the state auditor and to the mayor of the city or to the selectmen of the town within which such authority is organized, such reports to be in a form prescribed by the department with the written approval of said auditor. The department or said auditor may investigate the affairs of housing authorities and their dealings, transactions and relationship. They shall severally have the power to examine into the properties and records of housing authorities and to prescribe methods of accounting and the rendering of periodical reports in relation to clearance and housing projects undertaken by such authorities. The department may from time to time make, amend and repeal rules and regulations prescribing standards and stating principles governing the planning, construction, maintenance and operation of clearance and housing projects by housing authorities.

In the development or administration of a project which is not federally aided, a housing authority shall furnish the commissioner of labor and industries, upon his request, with a list of the classifications

of work performed by all architects, technical engineers, draftsmen, technicians, laborers and mechanics employed therein, and shall notify him from time to time of any changes in said classifications. Said commissioner shall determine rates of wages and fees and payments to health and welfare plans for each such classification and shall furnish the housing authority with a schedule of such rates, fees and payments. The rates of wages and fees paid by each housing authority to such architects, technical engineers, draftsmen, technicians, laborers and mechanics shall not be less than those determined by said commissioner who shall set the rate at no less than eighty per cent of the prevailing wage in accordance with sections twenty-six and twenty-seven of chapter one hundred and forty-nine. In the event that any housing authority fails to furnish said commissioner with said list within two weeks after the date of his request, said commissioner shall determine said rates of wages and fees and payments to health and welfare plans.

A housing authority may bargain collectively with labor organizations representing its employees and may enter into agreements with such organizations.

Notwithstanding any provision of law to the contrary, the provisions of section five of chapter one hundred and fifty A, so far as apt, shall apply to said authorities and their employees.

No employee of any housing authority, except an employee occupying the position of executive director, who has held his office or position, including any promotion or reallocation therefrom within the authority for a total period of five years of uninterrupted service, shall be involuntarily separated therefrom except subject to and in accordance with the provisions of sections forty-three and forty-five of said chapter thirty-one to the same extent as if said office or position were classified under said chapter.

Except as otherwise stated therein, compliance with this chapter, the rules and regulations adopted by the department and the terms of any low-rent housing project or clearance project authorized by this chapter, may be enforced by a proceeding in equity.

Section 30. A housing authority, with the written approval of the department and of the mayor of the city or selectmen of the town in which the project is situated, may enter into a contract with the federal government for purchasing or leasing a clearance or housing project owned or controlled by the federal government. If such a project has been so leased by a housing authority and such authority has by vote declared that the buildings of the project have been constructed in a manner that will afford necessary safety, sanitation and protection in other respects to the public, no changes shall be required by any agent of the commonwealth or of the city or town in the manner of construction, or the buildings, the fixtures or appurtenances thereto or the use for which the project was designed.

Section 31. A housing authority shall not undertake a low-rent housing project until it has submitted to the department the plans and description of the project, the estimated cost thereof, the proposed method of financing it, and a detailed estimate of the expenses and revenues thereof and the department has found that the plans and

description conform to proper standards of health, sanitation and safety, that the financial plan is sound and that with the aid of any federal grant or other subsidy the revenue from the project will be sufficient to meet its annually recurring expenses, including, without limitation of the foregoing, payments in lieu of taxes, depreciation and service of its indebtedness, and that the probable costs are such that it will be practicable to rent the property in accordance with the limitations set forth in section thirty-two without incurring an annual deficit.

In addition, the provisions of subparagraphs (*a*) and (*b*) shall apply to all projects except those as to which a contract between the federal government and a housing authority was in effect on December seventh, nineteen hundred and sixty-six and those involving the reconstruction, remodeling or repair of existing buildings:—

(*a*) Projects involving the purchase or acquisition of the right to use completed dwelling units which have been recently constructed, reconstructed or remodeled, whether condominium units, individual buildings part of a larger development, or a portion of the units in a multi-family development, shall be approved by the department only after it makes the following determinations: (i) the number of units involved does not exceed the following limits: in a building or development containing one to twelve units, no limit; in a building or development containing thirteen to thirty units, twelve units; and in a building or development containing thirty-one or more units, forty per cent of the total units; and (ii) the housing authority has made adequate arrangements for the maintenance and operation of the units, either through use of its own personnel or by contract with the owner or manager of the other units in the development.

(*b*) Projects involving the construction of new buildings by a housing authority shall be approved by the department following due notice and a public hearing in the town or city involved held to consider testimony relating to the determinations required to be made. The department shall approve such a project only if it makes the following determinations: (i) the proposed project does not include in excess of one hundred dwelling units in any one site; (ii) no site for the proposed project is located adjacent to or within one eighth of a mile of any site for a low-rent housing project which is in existence or has been approved by the department or is before the department for approval, except sites for projects approved or being approved under the preceding subparagraph (*a*); (iii) the design and layout of the proposed project is appropriate to the neighborhood in which it is to be located; and (iv) an adequate supply of dwelling units for families of low income is not then available in the private market, and the housing authority, after reasonable effort, has been unable to obtain such units either through reconstruction, remodeling, or repair of existing buildings or by the purchase of completed dwelling units. The provisions of this clause shall not apply to any project which shall be certified by the commissioner to be a project designed specifically for elderly persons of low income. A project shall be deemed to be designed specifically for elderly persons of low income if a majority of the dwelling units in said project are designed

specifically for elderly persons of low income and if not more than one hundred dwelling units in said project are designed for families of low income.

The department shall give written notice to the authority of its decision with respect to any project within thirty days after submission of such project. The department shall hold a public hearing upon any project, if requested in writing so to do, within ten days after the submission of the project, by the housing authority, or by the mayor or city council of the city or the selectmen of the town in which the proposed project is located, or by twenty-five or more taxable inhabitants of such city or town. Such public hearing may be combined with that required under subparagraph (*b*) in the case of projects approved under that subparagraph. If the department shall disapprove any project, it shall state in writing in such notice its reason for disapproval.

A project which has not been approved by the department when submitted to it may be again submitted to it with such modifications as are necessary to meet its objections.

When a housing authority has determined the location of a proposed clearance or low-rent housing project, it may, without awaiting the approval of the department, proceed by option or otherwise, to obtain control of the real property to be acquired for the project; provided, however, that it shall not, without the approval of the department, unconditionally obligate itself to acquire such real estate. When a housing authority receives notice that such a project has been approved by the department, it may proceed to acquire real estate for the project, and may construct, or contract for the construction of, any buildings and facilities planned therefor.

Section 32. Upon the completion or acquisition of a housing project by a housing authority it shall be maintained and operated by such authority. It is hereby declared to be the policy of this commonwealth that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or as a source of revenue to the commonwealth or to the city or town in which it is located. To this end an authority shall fix the rentals for dwelling units in its projects at no higher rates than it shall find to be necessary in order to produce revenues which together with all other available moneys, revenues, income and receipts of the authority, from whatever sources derived, will be sufficient:—(*a*) to pay, as the same become due, the principal and interest on the bonds of the authority; (*b*) to meet the cost of insurance and the payments in lieu of taxes provided by section sixteen and to provide for maintaining, operating and using the projects and the administrative expenses of the authority; (*c*) to create, during not less than the twelve years immediately succeeding its issuance of any bonds, notes or other evidences of indebtedness, a reserve sufficient to meet the largest principal and interest payments which will be due on such bonds in any one year thereafter and to maintain such reserve; and (*d*) to provide, subject to the approval of the department, such

recreational and community facilities in or near a housing project or projects as the authority may deem necessary for the health and welfare of the residents in the projects under its control, and such supervision and maintenance as may be necessarily incidental thereto.

In the operation or management of state-aided low-rent housing projects an authority shall at all times observe the following requirements with respect to rentals and tenant selection:—(*a*) It shall rent or lease the dwelling accommodations therein only at rentals within the financial reach of persons and families of low income. (*b*) It shall rent or lease to a tenant dwelling accommodations consisting of the least number of rooms which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding. (*c*) It shall not accept as a tenant any person or persons whose net annual income at the time of admission, less an exemption of one hundred dollars for each minor member of the family other than the head of the family and his spouse, exceeds five times the annual rental, including the value or cost to them of water, electricity, gas, other heating and cooking fuels and other utilities, of the dwellings to be furnished such person or persons. For the sole purpose of determining eligibility for continued occupancy, it may allow, from the net income of any family, an exemption for each minor member of the family (other than the head of the family and his spouse) of either (1) one hundred dollars, or (2) all or any part of the annual income of such minor. For the purpose of this section, a minor shall mean a person less than twenty-one years of age. (*d*) It shall not accept as a tenant in any project any person who is not a citizen of the United States; provided, however, that aliens who have served honorably in the armed forces of the United States, and who have been honorably discharged therefrom, shall be admitted to occupancy if they have made application for such citizenship; and provided, further, that aliens who have reached the age of sixty-five and who are eligible to receive old age assistance under chapter one hundred and eighteen A shall be admitted to occupancy. (*e*) There shall be no discrimination or segregation; provided, that if the number of qualified applicants for dwelling accommodations exceed the dwelling units available, preference shall be given to inhabitants of the city or town in which the project is located, and to the families who occupied the dwellings eliminated by demolition, condemnation and effective closing as part of the project as far as is reasonably practicable without segregation or discrimination against persons living in other substandard areas within the same city or town. For all purposes of this chapter no person shall, because of race, color, creed or religion, be subjected to any discrimination or segregation. (*f*) As between applicants equally in need and eligible for occupancy of the dwelling and at the rent involved, preference shall be given in the selection of tenants in the following order:—(1) to families or eligible persons which are to be displaced by any low-rent housing project or by a public slum clearance or urban renewal project initiated after January first, nineteen hundred and forty-seven, or other public improvement, or which were so displaced within three years prior to making application to such housing authority for admission to any low-rent housing; and as among such families first preference shall be

given to families of disabled veterans whose disability has been determined by the veterans' administration to be service-connected, and second preference shall be given to families of deceased veterans whose death has been determined by the veterans' administration to be service-connected, and third preference shall be given to families of other veterans; and (2) to families of other veterans, and as among such families first preference shall be given to families of disabled veterans whose disability has been determined by the veterans' administration to be service-connected, and second preference shall be given to families of deceased veterans whose death has been determined by the veterans' administration to be service-connected; and (3) to persons and families displaced by other public action including, without limitation, enforcement of the minimum standards of fitness for human habitation established by the state sanitary code and other local ordinances, by-laws, rules or regulations. (*g*) It shall not establish any requirement that applicants who have been displaced by any such public action be residents of the city or town in which the project is located, but may establish a requirement that any such applicant be a resident of the commonwealth for a period of six months prior to becoming a tenant.

In computing the rental for the purpose of this section, there shall be included therein the average annual cost, as determined by the authority, to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

In determining net income for the purpose of tenant eligibility with respect to a low-rent housing project financed by the commonwealth or by any city, town or other political subdivision thereof or administered by a housing authority under the provisions of this chapter or as agent for any municipality, the housing authority is authorized, where it finds such action equitable and in the public interest, to exclude amounts or portions thereof paid by the United States government or the commonwealth or any of its political subdivisions to the tenant for disability occurring in connection with military service. In determining the net income for the purpose of computing the rent of a totally unemployable disabled veteran, a housing authority is authorized to exclude amounts of disability compensation paid by the United States government for disability occurring in connection with military service in excess of eighteen hundred dollars in any year, but such authorization shall apply only in state-aided projects and while such projects are receiving state financial assistance, as provided in sections thirty-five and thirty-six.

In determining the net income of the tenant family for the purpose of computing the rent and determining eligibility for admission and continued occupancy, proceeds paid to such tenant family from policies of insurance shall be excluded from income.

The tenancy of a tenant of a housing authority shall not be terminated without cause and without reasons therefor given to said tenant in writing. A tenant at his request shall, except in the case of nonpayment of rent, be granted a hearing by a housing authority at least fifteen days prior to any such termination. The housing au-

thority's determination of cause shall be reviewable in the district court whenever an action for summary process is brought for possession of the premises.

A housing authority or its designee shall meet at reasonable times with tenant organizations to confer about complaints and grievances; provided, that if there is more than one tenant organization in any housing project, said authority or its designee shall not be obliged to meet with more than the two organizations in each project which represent, as the housing authority may determine, the largest number of tenants in that project. The housing authority shall inform the tenant organizations of its decisions on any matters presented.

Section 33. No project for low-rent housing involving the construction of new dwellings shall be undertaken by a housing authority unless the city or town has entered into an agreement with the housing authority providing that, subsequent to the initiation of the project and within five years after the completion thereof, there has been or will be elimination by demolition, condemnation, effective closing or compulsory repair or improvement of unsafe or unsanitary dwelling units situated in the locality or metropolitan area substantially equal in number to the number of newly constructed dwelling units provided by such project; provided, that where more than one family is living in an unsafe or unsanitary dwelling unit, the elimination of such unit shall count as the elimination of units equal to the number of families accommodated therein; and provided, further, that such elimination may, in the discretion of the department be deferred in any locality or metropolitan area where there is an acute shortage of decent, safe or sanitary housing available to families of low income; and provided, further, that this requirement shall not apply in the case of any low-rent housing project located in a rural nonfarm area, or to any low-rent housing project undertaken under the provisions of section thirty-four.

VETERANS AND RELOCATION HOUSING.

Section 34. The commonwealth, acting by and through the department, may enter into a contract or contracts with a housing authority for state financial assistance in the form of a guarantee by the commonwealth of notes or bonds or both of the housing authority issued to finance the cost of a housing project or projects, and annual contributions by the commonwealth. The guarantee by the commonwealth of notes or bonds or both of a housing authority shall be executed on each note or bond or both by the commissioner. Each such contract shall contain such limitations as to the development cost of the project and administrative and maintenance costs, and such other provisions, as the department may require. Each project shall be based upon a separate application made to the department and shall be planned to conform, as nearly as possible, to the existing published requirements of the federal government for low-rent or other housing projects, except such requirements as are based upon the cost limitations set forth in federal legislation. A project so planned shall be deemed to provide adequate performance as set forth in section three

J of chapter one hundred and forty-three. A housing authority may, with the approval of the department, acquire under the provisions of clause (*d*) of section eleven for the purposes of a project under this section or section thirty-five any land acquired by a city or town under the provisions of chapter three hundred and seventy-two of the acts of nineteen hundred and forty-six, as amended; provided, that such city or town has not completed construction of a housing project on such land. Each project developed under this section and section thirty-five shall be administered for occupancy in accordance with section thirty-two, except clause (*c*), and except that for each completed project the authority shall create, beginning in the first year immediately succeeding its issuance of any bonds, a reserve for principal and interest equal to one twelfth of the largest principal and interest payments which will be due on such bonds in any one year thereafter and shall maintain such reserve and increase the same by a similar amount for each of the eleven succeeding years thereafter and maintain each such increase; provided, however, that whenever the amount of the reserve shall equal at least fifty per cent of the total amount so required to be provided, the department may authorize extension of the time for creating such reserve to a period of twenty-four years from the issuance of any bonds and any such reserve shall be maintained and thereafter increased by equal amounts annually during the remaining portion of the twenty-four years; provided, however, that in the event a project is refinanced, there shall be appropriate adjustments made in the reserves required by the foregoing provisions to reflect any change in amounts of principal and interest payable to the end that twelve years after the date of the issuance of the original bonds, or, as soon thereafter as may be practicable, there will have been created and thereafter maintained a reserve equal to the largest amount of principal and interest due in any subsequent year on account of the outstanding bonds issued to finance the project; and except that each such project shall be occupied, except as hereinafter provided by veterans and their families, and priority shall be given first to veterans of World War II of low income and to veterans of low income who have served in the active armed forces of the United States at any time between June twenty-fifth, nineteen hundred and fifty and January thirty-first, nineteen hundred and fifty-five, both dates inclusive; then to veterans of low income, such low income to be determined from time to time by the department; then to a person without regard to family status who is a veteran and who is fifty years of age or over; then to elderly persons qualifying for housing under the provisions of section forty; then, without regard to family status, to a person of low income who is permanently and totally disabled and eligible for assistance under chapter one hundred and eighteen D, or blind; then to other persons of low income living in substandard housing; and a housing authority may remodel or reconstruct parts of projects erected under this section to make the same available for occupancy by elderly persons qualifying for housing under the provisions of section forty and such remodeled or reconstructed apartments shall be available for occupancy by eligible elderly persons of low income only to the extent that no eligible veterans apply for such units; provided, that if no eligible

veterans or elderly persons of low income apply for such remodeled or reconstructed units, the units shall be made available to other persons of low income living in substandard housing. Notwithstanding the requirement that each project shall be based upon a separate application made to the department, the department may consolidate two or more projects of the same housing authority, for which projects applications have been seasonably made under this section and which projects shall have been approved by the department, into a single project, and may make on behalf of the commonwealth a contract with the housing authority for state financial assistance in respect of such consolidated project superseding any such contract made in respect of any of the constituent projects, and may determine the date of completion of the consolidated project superseding any such date determined in respect of any of the constituent projects and such consolidated project shall be constructed, financed and managed as a single project; provided, that nothing contained in this sentence shall affect the rights of the holders of any notes or bonds outstanding in respect of any of the constituent projects at the time of such consolidation.

If federal assistance for low-rent housing becomes available in any form not applicable to projects under this chapter, the department shall immediately report the circumstances to the general court together with such recommendations for legislation as may be necessary to enable such projects to qualify for such assistance. Upon the availability of federal financial assistance for low-rent housing projects under this section, each housing authority having a contract for state financial assistance shall, upon receipt of written notice from the department, immediately enter into negotiations with the federal government to arrange for federal assistance with respect to any project developed hereunder and for the termination, in whole or in part, of state financial assistance. For any such project the department may order any housing authority (1) to apply for federal financial assistance, and (2) upon obtaining the approval of the federal government, to enter into a contract or contracts for federal assistance, and to make such arrangements as are possible to terminate, reduce or subordinate the obligation of the commonwealth to render financial assistance in such amount as is provided by federal assistance. No order of the department shall in any way affect any outstanding obligations of a housing authority or the rights of any holders of notes or bonds. The amount of federal payments shall be used to the fullest allowable extent to meet the payment of principal and interest on all notes or bonds guaranteed by the commonwealth.

After March thirty-first, nineteen hundred and fifty-three, or such later date as the department shall determine that an acute shortage of housing for veterans constituting a public exigency, emergency or distress no longer exists in a particular city or town, any project, or a part of any project with the land appurtenant thereto, constructed under this section may, with the approval of the department, be sold for the fair market value thereof as determined by the department, but not less than the total of the outstanding obligations of the housing authority with respect to such project if the whole is sold or not less than that percentage of the total outstanding obligations of

the authority with respect to such project which the cost of the part sold bears to the total cost of the entire project if a part is sold. Upon the expiration of the period for which the commonwealth is obliged to furnish state financial assistance, and provided the federal government has not become obligated to furnish federal financial assistance, any such project shall be offered for sale and disposed of as soon as is consistent with sound business judgment; provided, that any such sale shall be approved by the department. The Housing Authority Bonds Sinking Fund is hereby established and the state treasurer is hereby designated custodian thereof and he shall administer such fund in accordance with the provisions of chapter twenty-nine. So long as any notes or bonds or both issued by a housing authority to finance the cost of a project under this section or section thirty-five and guaranteed by the commonwealth are outstanding, the proceeds of any sale of such project shall be paid by the housing authority into such fund and shall be expended from time to time by the state treasurer to pay interest and principal of any notes or bonds or both issued by such housing authority to finance such project.

The proceeds of any sale of such project in excess of the total of all obligations of the housing authority with respect to such project shall, after the payment of all notes or bonds or both issued by the housing authority to finance the cost of such project, be paid to the city or town in which such project is located and to the commonwealth. The respective payments to such city or town and the commonwealth shall be proportional to the contributions theretofore made by such city or town and the commonwealth toward the development and maintenance of such project, as determined by the department. In determining the contributions of a city or town, the department shall include the amounts which the city or town would have received if such project had not been exempt from taxes, betterments and special assessments, less any amounts paid by the housing authority to the city or town in lieu of such taxes, betterments and special assessments. Payments to the commonwealth hereunder shall be paid into the state treasury and shall be credited to the General Fund.

The provisions of sections one to forty-four, inclusive, except section thirty-three shall, as far as apt, be applicable to projects developed under this section and under section thirty-five and to housing authorities while engaged in developing and administering such projects; provided, that whenever the phrases "federal government" or "federal legislation" are used in said sections one to forty-four, inclusive, they shall also mean the commonwealth or laws of the commonwealth, as the case may be; and that whenever the words "low-rent housing project" or "projects" are used in said sections they shall also mean a state-aided project under this section and section thirty-five.

The following provisions shall be applicable to each contract for state financial assistance under this section and section thirty-five:—

(*a*) A housing authority may sell temporary notes or bonds or both to finance a project; provided, that the total amount outstanding at any one time, exclusive of any notes or bonds or both which may be issued for refunding purposes shall not be in excess of the cost of the

project as approved by the department. Any such notes or bonds, whether original or refunding, may at any time be refunded through the issue and sale of notes or bonds hereunder but in no event for a term more than forty years after completion of the project, as determined by the department.

Notwithstanding the provisions of section seventeen the payment of the principal of, and interest on, all such notes or bonds or both shall be guaranteed by the commonwealth, and the full faith and credit of the commonwealth is hereby pledged for any such guarantee; provided, that the total amount of notes or bonds or both so guaranteed shall not exceed two hundred and twenty-five million dollars, in the aggregate, for all projects constructed under this section and section thirty-five, exclusive of any such notes or bonds or both which may be issued for refunding purposes.

No housing authority shall sell or offer for sale any such notes or bonds without receiving from the department approval of the amount, the term, the time of sale, the amortization schedule and other conditions of sale which the department may deem relevant in connection with the sale of such notes or bonds. Except as otherwise provided in this paragraph, the amortization schedule for any bonds issued hereunder shall provide for payment of principal and interest combined in substantially equal amounts during each year that any of said bonds remain outstanding. Bonds may be issued for a maximum period of forty years from the completion of the project as determined by the department or for any portion of such period as may remain at the time of issue of said bonds. Bonds may be issued for less than the maximum period permitted hereunder under an amortization schedule which provides for the payment of a larger amount of principal and interest in the last year any such bonds remain outstanding than in the prior years, in which event the amortization schedule for such bonds shall provide (1) for payment of principal and interest combined during each year except the last in amounts which are not less than the amounts which would be required by an amortization schedule for bonds bearing the same rate of interest and issued for the maximum period permitted; and (2) for the payment of the entire balance of such bonds in such last year. In the event bonds are issued for less than the maximum period permitted hereunder with a large amount of principal and interest payable in the last year as hereinbefore provided, the amount of principal and interest payable in said last year shall be disregarded in computing the requirements for the reserve under the first paragraph of this section. In the event notes are issued to finance or refinance a completed project, such notes shall be payable not later than twenty-four months after such issuance, and (1) such notes shall be permanently retired at the maturity thereof in an amount at least equivalent to the amount of retirement of bonds which would have been required by an amortization schedule for bonds issued for the maximum period permitted hereunder and bearing interest at the rate of two and one half per cent per annum, adjusted to the nearest month where notes are issued for a period other than one year; and (2) a reserve for principal and interest shall be created and maintained beginning in the first year immediately

succeeding the issuance of such notes, equal to one twelfth of the largest principal and interest payments which would become due in any one year thereafter, if such bonds had been issued, and such reserve shall be increased by a similar amount for each succeeding year; provided, however, that after June fourteenth, nineteen hundred and sixty-three, all such reserves whether theretofore or thereafter created and the maintenance and increase thereof, shall be governed in all respects solely by the provisions of the first paragraph of this section as if such bonds had been issued. Anything herein to the contrary notwithstanding, the failure of any amortization schedule of bonds or retirements of notes approved by the department to meet the foregoing requirements shall not affect the validity of bonds or notes issued hereunder.

(*b*) Each contract for financial assistance or supplementary state financial assistance shall provide that the commonwealth will pay to the housing authority annual contributions; provided, however, that the total amount of annual contributions contracted for by the commonwealth for any one year shall not exceed five million six hundred and twenty-five thousand dollars. Each such annual contribution by the commonwealth to the housing authorities shall be paid by the commonwealth upon approval and certification by the department to the state comptroller.

Each such contract shall contain a provision that the annual contributions shall be used for the payment of interest on, and principal of, notes or bonds or both of the housing authority. The annual contributions for any one project shall be payable in an amount not exceeding two and one half per cent of the cost of the project, as determined by the department, and for the fixed period during which the notes or bonds or both issued to finance the cost of the project or any refunding notes or bonds or both remain outstanding but in no event for more than forty years after the completion of the project, as determined by the department. Each such contract shall provide that whenever in any year the receipts of a housing authority in connection with a project exceed its expenditures for that project, including debt service, payments in lieu of taxes, administration, establishment of reserves, and other costs, as determined by the department, an amount equal to such excess, or, in the case of projects under section thirty-five, an amount equal to such portion of the excess as the department shall prescribe, shall be applied, or set aside for application, to purposes which shall effect a reduction in the amount of subsequent annual contributions. The full faith and credit of the commonwealth is hereby pledged to the payment of all annual contributions contracted for by the commonwealth.

In addition to the provisions set forth in the preceding two paragraphs which shall apply to projects completed on or before July first, nineteen hundred and sixty-six, this paragraph and the following paragraph shall apply to those projects which are completed after that date. Each contract for state financial assistance or for supplementary state financial assistance shall provide that the commonwealth will pay to the housing authority annual contributions; provided, however, that the total amount of such additional contributions contracted for

by the commonwealth for any one year shall not exceed one million eight hundred and seventy-five thousand dollars. Each such annual contribution by the commonwealth to the housing authorities shall be paid by the commonwealth upon approval and certification by the department to the state comptroller.

Each such contract shall contain a provision that the annual contributions shall be used for the payment of interest on, and principal of, notes or bonds or both of the housing authority. The annual contributions for any one project shall be payable in an amount not exceeding five per cent of the cost of the project, as determined by the department, and for the fixed period during which the notes or bonds or both issued to finance the cost of the project or any refunding notes or bonds or both remain outstanding, but in no event for more than forty years after the completion of the project, as determined by the department. Each such contract shall provide that whenever in any year the receipts of a housing authority in connection with a project exceed its expenditures for that project, including debt service, payments in lieu of taxes, administration, establishment of reserves, and other costs, as determined by the department, an amount equal to such excess, or, in the case of projects under section thirty-five, an amount equal to such portion of the excess as the department shall prescribe, shall be applied, or set aside for application, to purposes which shall effect a reduction in the amount of subsequent annual contributions. The full faith and credit of the commonwealth is hereby pledged to the payment of all contributions contracted for by the commonwealth. The provisions of subdivision (*e*) of this section shall not apply to projects completed after July first, nineteen hundred and sixty-six.

In addition to said annual contribution the commonwealth shall, upon approval and certification by the department to the state comptroller, pay, during any fiscal year, an additional annual contribution not exceeding one and one half per cent of the completion cost of such projects or parts of projects which are under temporary financing; provided that said projects or parts of projects have been determined to be completed and eligible to receive such annual contribution by said department; and provided, further, that the combined revenue and subsidy of such projects is insufficient to meet the cost of operation and debt service. Such additional annual contribution shall be in addition to that permitted under the second paragraph of this subdivision. In the case of a consolidated project, such additional annual contribution shall be computed on the basis of the completion cost or costs of the constituent projects or parts of projects under temporary financing. The additional annual contributions authorized under this paragraph shall not in any year exceed one million eighty-eight thousand five hundred and twenty dollars over and above the five million six hundred and twenty-five thousand dollars already provided for under the first paragraph of this subdivision.

(*c*) The department may enforce any of its orders, rules or regulations or the provisions of any contract between the commonwealth and a housing authority by a bill in equity filed in the superior

court or by a petition for a writ of mandamus filed under the provisions of section five of chapter two hundred and forty-nine. In the event of a breach by a housing authority of any provisions of contract between it and the commonwealth relating to a project, the commonwealth, acting by the department, may take immediate possession of the project, and retain possession and operate the project in the place and stead of the housing authority, with all the rights and powers of the housing authority, and subject to all of its obligations respecting the possession and operation of the project and the revenues therefrom, until such time as such breach shall have been corrected to the satisfaction of the department.

(*d*) A housing authority which sells bonds or notes to finance a project under authority of this section, or which has received funds from a city or town under authority of chapter three hundred and seventy-two of the acts of nineteen hundred and forty-six as amended, shall cause an audit to be made of its accounts annually at the close of a fiscal year by the department of the state auditor and a copy of the report of said audit shall be filed promptly with the department.

(*e*) Any type of housing including one, two and three family dwellings may be constructed under this section notwithstanding the provision that each project shall conform as nearly as possible to the existing published requirements of the federal government for low-rent or other housing projects. In offering for sale residences constructed under this section, preference to potential buyers shall be given whenever reasonably possible as follows:—(1) veterans tenants of such residences; (2) all other World War II veterans, as defined in section seven of chapter four; (3) surviving widows and mothers of said veterans of World War II; (4) all other United States war veterans, (5) all other resident citizens of the city or town in which said residences are located; (6) all other citizens of the commonwealth; (7) an urban redevelopment corporation; and (8) all others.

(*f*) Whenever a housing authority shall determine that land acquired by it under clause (*d*) of section eleven for the purposes of this section is in excess of or no longer required for such purposes it may, upon approval by the department, sell or otherwise dispose of such land by deed or instrument approved as to form by the attorney general. Funds received from a sale of land as herein provided shall be paid into the Housing Authority Bonds Sinking Fund as provided in this section.

(*g*) Whenever a housing authority shall determine that any gas, electric or heating distribution system which has been built or acquired for the purposes of this section is no longer required for such purposes, it may, upon approval by the department, sell or otherwise dispose of such gas, electric or heating distribution system, or any part thereof, by deed or instrument approved as to form by the attorney general. Funds received from a sale of a gas, electric or heating distribution system or any part thereof, as herein provided, shall be paid into the Housing Authority Bonds Sinking Fund as provided in this section.

(*h*) The department shall promulgate rules and regulations relative to uniform standards for tenant selection which shall establish the

order of priority governing the selection of tenants, and a housing authority thereafter shall be bound by such standards in its selection of tenants.

Notwithstanding any of the provisions of sections thirty-five to thirty-seven, inclusive, any housing authority having a contract for state financial assistance may, with respect to any project developed hereunder, and in accordance with the provisions of section fourteen and section thirty, contract with the federal government for financial assistance in accordance with the provisions of federal legislation.

Section 35. The commonwealth, acting by and through the department, may enter into a contract or contracts with the housing authority for supplementary state financial assistance in the form of a guarantee by the commonwealth of any loan made by the housing authority to finance that portion of the cost of the housing project or projects not financed with federal assistance and annual contributions by the commonwealth on that portion of the cost of such project or projects for which no federal contributions are available.

Section 36. The commonwealth shall have power to receive loans and grants from the federal government or any agency or instrumentality thereof, or from any other source, public or private, and to use any such loan or grant or part thereof for any purpose of this chapter, or to act as agent of, or to cooperate in any way with, the federal government or any agency or instrumentality thereof on any project authorized by this chapter.

Section 37. For the purpose of avoiding, so far as practicable, during the period of public exigency, emergency and distress now existing on account of the acute shortage of housing in many cities and towns of the commonwealth, the making of persons or families homeless as the result of the demolition of dwelling units on land acquired or to be acquired for the purposes of an urban renewal project, or any other public improvement by the commonwealth, a city or town, or any other public body, the commonwealth acting by and through the department may enter into a contract or contracts with a housing authority, or, in the event an urban renewal agency exists within a city or town, with a housing authority upon request of the urban renewal agency, for state financial assistance in the form of a guarantee by the commonwealth of notes or bonds or both of the housing authority issued to finance the cost of a relocation project or projects. The guarantee by the commonwealth of the notes or bonds or both of a housing authority shall be executed on each note or bond or both by the commissioner; provided, however, that the total amount guaranteed shall not exceed twenty-five million dollars in the aggregate or the actual cost of the construction of two thousand units, whichever amount is the lesser. Each such contract shall contain such limitations as to the development cost of the project and administrative and maintenance costs, as the department may require. Each project shall be based upon a separate application made to the department, which shall include such evidence of need as the department may require including a statement that the local planning board has been informed as to the location and number of dwelling units of the proposed project. The department shall ascertain and certify the need for each project after determining that there exists in such city

or town and its vicinity a period of public exigency, emergency and distress occasioned by an acute shortage of housing; provided, that the department may not approve a project or projects in any city or town for a number of dwelling units in excess of fifty per cent of the number of families to be displaced by an urban renewal project or other public improvement.

A project constructed under this section shall be deemed to provide adequate performance as set forth in section three J of chapter one hundred and forty-three.

After such date as the department may determine that such acute shortage of housing for displaced persons constituting a public exigency, emergency or distress no longer exists, any relocation project acquired, constructed, moved or rehabilitated may, with the approval of the department, be offered for sale at its fair market value and disposed of as soon as is consistent with sound business judgment; provided, that no such sale shall be for less than the total of the outstanding obligations of the housing authority with respect to such project. If the proceeds of the sale of such a project are in excess of the total of all obligations for the housing authority with respect to such project, such excess shall after the payment of all notes, bonds and other outstanding obligations issued by the housing authority to finance the cost of such project be paid to the city or town in which such project is located.

Sections one to forty-four, inclusive, of this chapter, except sections thirty-two and thirty-three, shall, as far as apt, be applicable to projects developed under this section and to housing authorities while engaged in developing and administerng such projects; provided that no application for state financial assistance under this section shall be accepted by the department after January first, nineteen hundred and sixty-five.

An authority shall not acquire land for the site of a relocation project by eminent domain under chapter seventy-nine or chapter eighty A, or by purchase, gift or otherwise, unless such land is entirely or almost entirely unoccupied by inhabited dwellings; provided, however, that an authority may acquire a completed dwelling or a group of dwellings for a relocation project if acquisition of such does not involve their demolition. The total number of dwelling units to be created in any one city or town in connection with relocation projects, for which state assistance may be granted, shall not exceed two per cent of the total of dwelling units in such city or town as reported by the United States census of nineteen hundred and fifty.

The following provisions shall be applicable to each contract for state financial assistance under this section and section thirty-five:—

(*a*) A housing authority may sell temporary notes or bonds or both to finance a relocation project; provided, that the total amount outstanding at any one time, exclusive of any notes or bonds or both which may be issued for refunding purposes, shall not be in excess of the cost of the projects as approved by the department. Any such notes or bonds may be refunded through the sale of similar notes or bonds, but in no event for a term more than as determined by the department. Notwithstanding the provisions of section seventeen, the

payment of the principal of, and interest on, all such notes or bonds or both shall be guaranteed by the commonwealth and the faith and credit of the commonwealth is hereby pledged for any such guarantee; provided, that the total amount so guaranteed shall not exceed twenty-five million dollars in the aggregate. No housing authority shall sell or offer for sale any such notes or bonds without receiving from the department approval of the amount, the term and the time of sale. The net income of the project, after operating charges and expenses as approved by the department, shall be applied annually in reduction of the outstanding indebtedness of the housing authority in relation to the project. In case any funds become available for the payment of any bonds, notes or other obligations issued or incurred in connection with a relocation project before such obligations are due, and the holders of any such obligations are not willing to accept present payment thereof, such funds shall be held by the authority until such obligations are due and then applied to the payment thereof, and in the meantime shall be invested only in securities legal for the investment of funds of savings banks.

(*b*) Upon the completion or acquisition of a project by a housing authority, it shall be maintained and operated by such authority. In the operation or management of relocation projects, an authority shall at all times observe the following requirements with respect to rentals and tenant selection:—

(1) It shall rent to a tenant dwelling accommodations consisting of the least number of rooms which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof without overcrowding, in accordance with a rent schedule approved by the department. Such rent schedule shall be arranged so as to be sufficient, in the opinion of the department, to pay all of the costs of maintaining and operating the project, including a reasonable allowance for depreciation, and may, in the discretion of the department, be sufficient so as also to include each year an allowance for the amortization of all or part of the cost of acquiring and constructing the project not otherwise provided for.

(2) A housing authority shall not admit a person or family for occupancy in a relocation project for a period longer than may be from time to time determined by the department. A housing authority shall accept as tenants persons or families who occupied dwellings eliminated by demolition, condemnation and effective closing as part of any public improvement made by the commonwealth, city or town or other body politic and corporate or of any urban renewal, code enforcement or chapter one hundred and twenty-one A project; provided, that to the extent that no displaced persons apply for tenancy in such relocation project the authority may admit as tenants veterans, elderly persons of low income, and families of low income; provided, that no vacancies exist for such elderly persons and families of low income in existing low-rent public housing projects. If a housing authority acquired a completed dwelling or group of dwellings for a relocation project, and the acquisition of such does not involve their demolition, the authority may permit any person or family otherwise eligible under this chapter to continue in occupancy for such period or

periods that such dwelling units are not needed for persons or families displaced by any public improvement or urban renewal, code enforcement or chapter one hundred and twenty-one A project.

(3) In any action to recover possession of premises occupied in a relocation project, the provisions of sections twelve and thirteen of chapter one hundred and eighty-six and section nine of chapter two hundred and thirty-nine shall not apply.

The provisions of this chapter or any other law to the contrary notwithstanding, a housing authority may acquire with the approval of the department for use as a relocation project any existing project owned by it or leased to it by the federal government, and may with the approval of the department operate and maintain such project as a relocation project.

HOUSING FOR THE ELDERLY.

Section 38. It is hereby declared that substandard and decadent areas exist in certain portions of the commonwealth and that there is not, in certain parts of the commonwealth, an adequate supply of decent, safe and sanitary housing for elderly persons of low income, available for rents which such persons can afford to pay, and the rents which such persons can afford to pay would not warrant private enterprise in providing housing for such persons; that this situation tends to cause an increase and spread of communicable and chronic diseases, that the lack of properly constructed dwelling units designed specifically to meet the needs of elderly persons aggravates those diseases peculiar to the elderly thereby crowding the hospitals in the commonwealth with elderly persons under conditions of idleness that inevitably invite further senility; that this situation constitutes a menace to the health, safety, welfare and comfort of the inhabitants of the commonwealth and is detrimental to property values in the localities in which it exists; that this situation cannot readily be remedied by private enterprise; and that a public exigency exists which makes the provision of housing for elderly persons of low income and the clearance of decadent or substandard areas a public necessity; that the provision of housing for elderly persons of low income for the purpose of reducing the cost to the commonwealth of their care by promoting their health and welfare, thereby prolonging their productivity in the interest of the state and nation, and the clearance of decadent or substandard areas, or either, constitutes and hereby is declared to be a public use for which private property may be taken by eminent domain and public funds raised by taxation may be expended.

Section 39. The housing authority of each city or town organized under section three shall have power to provide housing for elderly persons of low income either in separate projects or as a definite portion of any other projects undertaken under sections twenty-five to forty-four, inclusive, of this chapter, or in remodeled or reconstructed existing buildings, and the provisions of sections one to forty-four, inclusive, of this chapter shall, so far as apt, be applicable to projects and parts of projects undertaken under sections thirty-eight through forty-one except as otherwise provided in section forty or elsewhere in this chapter.

In any town in which a veterans' housing project or project for the housing of elderly persons has already been constructed or established, the local housing authority shall not be empowered to erect a new housing project for elderly persons nor shall a contract for financial assistance applicable to the construction of a new project for the housing of elderly persons be entered into pursuant to the provisions of section forty-one until there shall have been submitted to, and approved by vote of, an annual town meeting or a special town meeting called therefor, the question whether the local housing authority should be empowered to erect such new housing project, for one of the purposes authorized by law, as said authority should thereafter determine to be reasonably necessary and feasible.

Section 40. The following provisions shall be applicable to housing for elderly persons of low income:—

(*a*) There shall be no requirement that the occupants of such housing constitute families, and housing may be provided in separate dwelling units for elderly persons living alone or with such other persons who are either eligible under the provisions of sections thirty-eight to forty-one, inclusive, or necessary to the physical welfare of the elderly occupant; provided, that such other necessary person is eligible for low-rent housing.

(*b*) Projects for such housing may and shall, when practicable, be established near the neighborhoods where the elderly persons reside.

(*c*) Housing for elderly persons of low income shall conform to standards established by the department after consultation with the department of public health, the department of public welfare and the board of standards, and shall be designed so as to alleviate the infirmities characteristic of the elderly.

(*d*) Projects or parts of projects shall be constructed for elderly persons of low income and shall be available and assigned to such persons without regard to their status as veterans upon the application of such elderly persons and the establishment of their eligibility under the provisions of sections thirty-eight to forty-one, inclusive.

(*e*) Rents for dwelling units in projects or parts of projects constructed for elderly persons of low income shall be computed as provided in section thirty-two; provided, however, that the rent so computed shall not be increased as to any tenant unless his annual income has increased at least twelve hundred dollars above the annual income received by him at the time the rent was computed; and provided, further, that in the case of persons receiving old age assistance under chapter one hundred and eighteen A, directly or indirectly in whole or in part, from the commonwealth, dwelling units in projects or parts of projects constructed under section thirty-nine shall be deemed to be adequate housing for elderly persons and shall qualify for and rent at the maximum rental allowance under the old age assistance laws, regulations or policies.

(*f*) The department shall promulgate rules and regulations relative to uniform standards for tenant selection which shall establish the order of priority governing the selection of tenants, and a housing authority thereafter shall be bound by such standards in its selection of tenants.

STATE GUARANTEE OF BONDS AND NOTES.

Section 41. The commonwealth, acting by and through the department, may enter into a contract or contracts with a housing authority for state financial assistance in the form of a guarantee by the commonwealth of bonds and notes, or either bonds or notes, of the housing authority issued to finance the cost of a project or projects or a part or parts of a project or projects to provide housing for elderly persons of low income. The amount of bonds and notes, or bonds or notes, guaranteed by the commonwealth under this section shall not exceed two hundred and ten million dollars. Each contract for state financial assistance shall provide that the commonwealth will pay to the housing authority annual contributions; provided, however, that the total amount of annual contributions contracted for by the commonwealth for any one year shall not exceed five million two hundred and fifty thousand dollars. Each such annual contribution by the commonwealth shall be paid by the commonwealth upon approval and certification by the department to the state comptroller. The provisions of sections thirty-four and thirty-five shall, so far as apt, be applicable to contracts for state financial assistance under this section.

In addition to said annual contribution, the commonwealth shall upon approval and certification by the department to the state comptroller pay an additional annual contribution of one and one half per cent of the completion cost during any fiscal year over and above the annual contribution of two and one half per cent of the completion cost permitted under the first paragraph of this section and under sections thirty-four and thirty-five for any project or projects or a part or parts of a project or projects to provide housing for elderly persons of low income; provided, said project or projects have been determined to be complete and eligible to receive such annual contributions by the department; and provided, further, that the commissioner finds that the combined revenue and subsidy of such projects is insufficient to meet the cost of operation and debt service. The additional annual contributions authorized under this paragraph shall not in any one year exceed three million one hundred and fifty thousand dollars, over and above the five million two hundred and fifty thousand dollars as authorized under the first paragraph.

RENTAL ASSISTANCE PROGRAM.

Section 42. It is hereby declared (*a*) that there does not now exist within the commonwealth an adequate supply of decent, safe and sanitary dwelling units available at rents which families of low income can afford without depriving themselves of the other necessities of life, (*b*) that the elimination of decadent or substandard areas in the commonwealth and the rehousing of the families now in such areas, many of them of low income, in decent, safe and sanitary housing is a public necessity, (*c*) that experience has demonstrated that the construction of the new low-rent housing projects on the large scale required to provide the needed dwelling units would be unduly expensive and would generate undesirable social consequences, (*d*)

that there exists a supply of moderate rental dwelling units within the commonwealth presently under construction or vacant which could be used to house such families of low income as cannot presently afford decent, safe and sanitary housing, provided public funds are available to supplement the portion of their income which they can afford to spend on housing, and (*e*) a program of rental assistance operated through the housing authorities in the cities and towns would help end the undesirable concentration and segregation of families of low income in separate, concentrated areas of our cities and towns and help give every citizen an equal opportunity to enjoy decent, safe and sanitary housing in a neighborhood of his own choice.

Section 43. In addition to its other powers and for the purpose of implementing a program of rental assistance a housing authority may rent or lease dwelling units for periods of not less than one nor more than five years. Any such lease shall contain a provision conditioning the obligations of the housing authority thereunder upon the prior certification by the board of health of the city or town that such dwelling unit is in compliance with the provisions of the minimum standards of fitness for human habitation set forth in the state sanitary code. No housing authority shall enter into any such lease until (*a*) the housing authority has adopted a scale of maximum rents, including specified utility charges, payable by the authority for housing units of various types under such leases and the department has approved such scale as being consistent with the purposes of the rental assistance program, (*b*) the housing authority has determined that an adequate supply of the type of housing to be leased is not presently available in the low-rent housing projects located within the city or town, and (*c*) the housing authority has determined that the rent payable under the lease is not in excess of rents payable for similar types of housing units within the city or town. A housing authority shall, in order to encourage the construction and remodeling of dwelling units, endeavor to lease units recently constructed, reconstructed or remodeled but may enter into leases for other units. In no event shall the number of units leased by any housing authority in any one building or development exceed the following limits: In a building or development containing one to three units, no limit; in a building or development containing four to eight units, two units; in a building or development containing nine or more units, one fourth of the total units, rounded up to the highest whole number; in any one block bounded by public ways, twenty per cent of the total units therein contained.

Section 44. The requirements with respect to rentals and tenant selection for low-rent housing projects shall apply to units leased by a housing authority under the rental assistance program, except that (*a*) as between applicants, who need not be residents of the city or town, equally in need and eligible for occupancy, preference shall be given in the selection of tenants to the following types of applicants; first to families with four or more minor dependents, then to families displaced by public action, and then to elderly persons of low income; provided, however, that in the case of any project financially assisted by the federal government, preference shall be given in the selection of tenants in whatever manner is required by federal legislation, (*b*)

rentals payable by selected tenant families or persons shall be determined by a housing authority solely on the basis of the ability of such family or person to pay, and shall be adjusted whenever such ability changes; (*c*) a housing authority shall release and assign its rights under any lease to the tenant then occupying a dwelling unit under the rental assistance program provided the tenant so requests, and provided the tenant demonstrates financial ability to pay the full rent called for under the lease; and (*d*) payments to the owner of a dwelling unit leased under the rental assistance program shall be made in the manner determined by the housing authority and agreed to by said owner. Amounts paid on behalf of tenant families under the rental assistance program shall not be considered in determining the amount of welfare or other public assistance payments to which they may be entitled.

Funds appropriated for the rental assistance program established by sections forty-two to forty-four, inclusive, or which may become available therefor from the federal government or any other sources, shall be allocated within the following limits:—cities with over five hundred thousand population, not in excess of fifty per cent of such funds for any one such city; cities and towns with between one hundred thousand and five hundred thousand population, not in excess of twenty per cent of such funds for any one such city or town; and cities and towns under one hundred thousand population, not in excess of ten per cent of such funds for any one such city or town. The department shall allocate funds on the basis of applications therefor from the housing authorities.

URBAN RENEWAL PROGRAMS.

Section 45. It is hereby declared that substandard, decadent or blighted open areas exist in certain cities and towns in this commonwealth; that each constitutes a serious and growing menace, injurious and inimical to the safety, health, morals and welfare of the residents of the commonwealth; that each contributes substantially to the spread of disease and crime, necessitating excessive and disproportionate expenditure of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution and punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities; that each constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities and towns, and retards the provision of housing accommodation; that each decreases the value of private investments and threatens the sources of public revenue and the financial stability of communities; that because of the economic and social interdependence of different communities and of different areas within single communities, the redevelopment of land in decadent, substandard and blighted open areas in accordance with a comprehensive plan to promote the sound growth of the community is necessary in order to achieve permanent and comprehensive elimination of existing slums and substandard conditions and to prevent the recurrence of such slums or conditions or their development in other parts of the community or in

other communities; that the redevelopment of blighted open areas promotes the clearance of decadent or substandard areas and prevents their creation and occurrence; that the menace of such decadent, substandard or blighted open areas is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the acquisition of property for the purpose of eliminating decadent, substandard or blighted open conditions thereon and preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, the disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by urban renewal agencies and any assistance which may be given by cities and towns or any other public bodies in connection therewith are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the acquisition, planning, clearance, conservation, rehabilitation or rebuilding of such decadent, substandard and blighted open areas for residential, governmental, recreational, educational, hospital, business, commercial, industrial or other purposes, including the provision of streets, parks, recreational areas and other open spaces, are public uses and benefits for which private property may be acquired by eminent domain or regulated by wholesome and reasonable orders, laws and directions and for which public funds may be expended for the good and welfare of this commonwealth.

It is further declared that while certain of such decadent, substandard and blighted open areas, or portions thereof, may require acquisition and clearance because the state of deterioration may make impracticable the reclamation of such areas or portions by conservation and rehabilitation, other of such areas, or portions thereof, are in such condition that they may be conserved and rehabilitated in such a manner that the conditions and evils enumerated above may be alleviated or eliminated; and that all powers relating to conservation and rehabilitation conferred by this chapter are for public uses and purposes for which public money may be expended and said powers exercised.

The necessity in the public interest for the provisions of this chapter relating to urban renewal projects is hereby declared as a matter of legislative determination.

Section 46. An urban renewal agency shall have all the powers necessary or convenient to carry out and effectuate the purposes of relevant provisions of the General Laws, and shall have the following powers in addition to those specifically granted in section eleven or elsewhere in this chapter:—

(*a*) to determine what areas within its jurisdiction constitute decadent, substandard or blighted open areas;

(*b*) to prepare plans for the clearance, conservation and rehabilitation of decadent, substandard or blighted open areas, including plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, plans for the enforcement of laws, codes and regulations relating to the use of land and the use or occupancy of buildings and improvements, plans for the compulsory repair and

rehabilitation of buildings and improvements, and plans for the demolition and removal of buildings and improvements;

(*c*) to prepare or cause to be prepared urban renewal plans, master or general plans, workable programs for development of the community, general neighborhood renewal plans, community renewal programs and any plans or studies required or assisted under federal law;

(*d*) to engage in urban renewal projects, and to enforce restrictions and controls contained in any approved urban renewal plan or any covenant or agreement contained in any contract, deed or lease by the urban renewal agency notwithstanding that said agency may no longer have any title to or interest in the property to which such restrictions and controls apply or to any neighboring property;

(*e*) to conduct investigations, make studies, surveys and plans and disseminate information relative to community development, including desirable patterns for land use and community growth, urban renewal, relocation, and any other matter deemed by it to be material in connection with any of its powers and duties, and to make such studies, plans and information available to the federal government, to agencies or subdivisions of the commonwealth and to interested persons;

(*f*) to develop, test and report methods and techniques and carry out demonstrations for the prevention and elimination of slums and urban blight; and

(*g*) to receive gifts, loans, grants, contributions or other financial assistance from the federal government, the commonwealth, the city or town in which it was organized or any other source.

Section 47. Notwithstanding any contrary provision of this chapter, an urban renewal agency may, with the consent of the department and municipal officers, and after a temporary loan contract for the purpose has been executed under the federal Housing Act of 1949, as amended, take by eminent domain, as provided in clause (*d*) of section eleven, or acquire by purchase, lease, gift, bequest or grant, and hold, clear, repair, operate and, after having taken or acquired the same, dispose of land constituting the whole or any part or parts of any area which, after a public hearing of which the land owners of record have been notified by registered mail and of which at least twenty days notice has been given by publication in a newspaper having a general circulation in the city or town in which the land lies, it has determined to be a decadent, substandard or blighted open area and for which it is preparing an urban renewal plan, and for such purposes may borrow money from the federal government or any other source or use any available funds or both; provided, however, that no such taking or acquisition shall be effected until the expiration of thirty days after the urban renewal agency has notified the land owner of record by registered mail and has caused a notice of such determination to be published, in a newspaper having general circulation in such city or town. Within thirty days after publication of the notice of such determination, any person aggrieved by such determination may file a petition in the supreme judicial or superior court sitting in Suffolk county for a writ of certiorari against the urban renewal agency to correct errors of law in such determination, which shall be

the exclusive remedy for such purpose; and the provisions of section one D of chapter two hundred and thirteen, and of section four of chapter two hundred and forty-nine, shall apply to said petition except as herein provided with respect to the time for the filing thereof.

Section 48. No urban renewal project shall be undertaken until (1) a public hearing relating to the urban renewal plan for such project has been held after due notice before the city council of a city or the municipal officers of a town and (2) the urban renewal plan therefor has been approved by the municipal officers and the department as provided in this section.

Whenever the urban renewal agency determines that an urban renewal project should be undertaken in the city or town in which it was organized, it shall apply to the municipal officers for approval of the urban renewal plan for such project. Such application shall be accompanied by an urban renewal plan for the project, a statement of the proposed method for financing the project and such other information as the urban renewal agency deems advisable.

Every urban renewal plan approved by the municipal officers shall be submitted to the department together with such other material as the department may require.

The department shall not approve any urban renewal plan unless the planning board established under the provisions of section seventy or eighty-one A of chapter forty-one for the city or town where the project is located has found and the department concurs in such finding or, if no planning board exists in such city or town, the department finds that the urban renewal plan is based upon a local survey and conforms to a comprehensive plan for the locality as a whole. The department shall likewise not approve any urban renewal plan unless it shall have found (*a*) the project area would not by private enterprise alone and without either government subsidy or the exercise of governmental powers be made available for urban renewal; (*b*) the proposed land uses and building requirements in the project area will afford maximum opportunity to privately financed urban renewal consistent with the sound needs of the locality as a whole; (*c*) the financial plan is sound; (*d*) the project area is a decadent, substandard or blighted open area; (*e*) that the urban renewal plan is sufficiently complete, as required by section one; and (*f*) the relocation plan has been approved under chapter seventy-nine A.

Within sixty days after submission of the urban renewal plan, the department shall give written notice to the urban renewal agency of its decision with respect to the plan. If the department shall disapprove any such plan, it shall state in writing in such notice its reasons for disapproval. A plan which has not been approved by the department when submitted may be again submitted to it with such modifications, supporting data or arguments as are necessary to meet its objections. The department may hold a public hearing upon any urban renewal plan submitted to it, and shall do so if requested in writing within ten days after submission of the plan by the urban renewal agency, the mayor or city council of the city or selectmen of the town in which the proposed project is located, or twenty-five or more taxable inhabitants of such city or town.

Any provision to the contrary notwithstanding, when the location of a proposed urban renewal project has been determined, the urban renewal agency may, without awaiting the approval of the department, proceed, by option or otherwise, to obtain control of such property within the urban renewal project area as is necessary to carry out the urban renewal plan; but it shall not, without the approval of the department, unconditionally obligate itself to purchase or otherwise acquire any such property except as provided in section forty-seven.

When the urban renewal plan or such a project has been approved by the department and notice of such approval has been given to the urban renewal agency, such agency may proceed at once to acquire real estate within the location of the project, either by eminent domain or by grant, purchase, lease, gift, exchange or otherwise.

Section 49. If an urban renewal agency shall sell or lease any property acquired by it for an urban renewal project, the terms of such sales or leases shall obligate the purchasers or lessees, (*a*) to devote the land to the use specified in the urban renewal plan for said land; (*b*) to begin the building of their improvements within a reasonable time; provided, however, that, with respect to any improvements of a type which any federal agency, as defined in subsection (*b*) of section 3 of the Federal Property and Administrative Services Act of 1949, as amended, is otherwise authorized to make, this clause shall apply to such federal agency only to the extent that it is authorized, and funds have been made available, to make the improvements involved; (*c*) to give preference in the selection of tenants for dwelling units built in the project area to families displaced therefrom because of clearance and renewal activity who desire to live in such dwelling units and who will be able to pay rents or prices equal to rents or prices charged other families for similar or comparable dwelling units built as a part of the same redevelopment; and (*d*) to comply with such other conditions as are deemed necessary to carry out the purposes of this chapter, or requirements of federal legislation or regulations under which loans, grants or contributions have been made or agreed to be made to meet a part of the cost of the project. Nothing in this chapter shall be construed as limiting the power of an urban renewal agency in the event of a default by a purchaser or lessee of land in an urban renewal project to retake title to and possession of the property sold or leased free from the obligations in the conveyance or lease thereof.

Section 50. An urban renewal agency is hereby authorized to delegate to a city or town or other public body or to any board or officer of a city, town or other public body any of the powers or functions of the agency with respect to the planning or undertaking of an urban renewal project in the area in which such city, town or other public body is authorized to act, and such city, town or other public body, or such board or officer thereof, is hereby authorized to carry out or perform such powers or functions for the agency. Any public body is hereby authorized to enter into agreements which may extend over the period of a loan to the urban renewal agency by the federal government, notwithstanding any provision of rule of law to the

contrary, with any other public body or bodies respecting action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance, in connection with an urban renewal plan or urban renewal project. An urban renewal agency, to the greatest extent it determines to be feasible in carrying out the provisions of this chapter, shall afford maximum opportunity consistent with the sound needs of the city or town as a whole for the rehabilitation or redevelopment of decadent, substandard or blighted open areas by private enterprise.

Section 51. A housing authority of a city or town which, prior to the organization of a redevelopment authority in such city or town, has initiated an urban renewal project may complete, operate and maintain such project notwithstanding such organization of a redevelopment authority; provided, however, that if the municipal officers of such city or town so order and with the consent in writing of the holders of any bonds, notes or certificates of indebtedness of the housing authority issued for such project and then outstanding, the redevelopment authority shall take over a planned or existing urban renewal project initiated by a housing authority. The initiating authority shall use its best efforts promptly to secure the consent of all such holders and, all necessary consents having been secured, shall promptly execute an agreement with the authority which is to take over such project. Thereupon such authority shall assume, exercise, continue, perform and carry out all undertakings, obligations, duties, rights, powers, plans and activities with respect to such project and the authority which initiated the project shall have no powers and duties with respect to such project.

Section 52. Each urban renewal agency shall keep an accurate account of all its activities, receipts and expenditures in connection with the planning and execution of urban renewal projects and shall annually in the month of January make a report of such activities, receipts and expenditures to the department, the state auditor and the mayor of the city or to the selectmen of the town within which such authority is organized, such reports to be in a form prescribed by the department and approved by the state auditor; provided, that such form shall not be inconsistent with any federal legislation and shall conform as closely as may be to such legislation. The department or state auditor shall have the power to examine into the properties and records of urban renewal agencies and to prescribe methods of accounting, not inconsistent with federal legislation, for such activities, receipts and expenditures.

A veteran, as defined in section twenty-one of chapter thirty-one, who holds an office or position in the service of a redevelopment authority not classified under said chapter thirty-one, and has held such office or position for not less than three years, shall not be involuntarily separated from such office or position except subject to and in accordance with the provisions of sections forty-three and forty-five of said chapter thirty-one to the same extent as if said office or position were classified under said chapter. If the separation in the case of such unclassified offices or positions results from lack of work or lack of money, such a veteran shall not be separated from his office

or position while similar offices or positions in the same group or grade, as defined in section forty-five of chapter thirty, exist unless all such offices or positions are held by such veterans, in which case such separation shall occur in the inverse order of their respective original appointments.

No person permanently employed by a redevelopment authority, who is not classified under chapter thirty-one, shall, after having actually performed the duties of his office or position for a period of six months, be discharged, removed, suspended, laid off, transferred from the latest office or employment held by him without his consent, lowered in rank or compensation, nor shall his office or position be abolished, except for just cause and in the manner provided by sections forty-three and forty-five of chapter thirty-one.

Any employee who has transferred from a housing authority to a redevelopment authority in the same city or town shall, for the purposes of this section, be credited for the period of time in which he was employed by a housing authority.

STATE AID FOR URBAN RENEWAL.

Section 53. Any city or town, acting by and through its urban renewal agency may apply to the department for an urban renewal assistance grant to meet in part the cost of an approved urban renewal project. Such application shall be in the form prescribed by the department, and shall be accompanied by such additional information, drawings, plans, reports, estimates and exhibits as the department may require. The department shall make such rules and regulations as are necessary to effectuate the purposes of this section and sections fifty-four to fifty-seven, inclusive.

Section 54. Upon receipt of an application under the provisions of section fifty-three the department shall examine such application and any facts, estimates or other information relative thereto, and shall determine whether the proposed project complies with the provisions of the general laws and with rules and regulations prescribed in accordance therewith governing the approval and administration of urban renewal assistance grants. Upon the determination of satisfactory compliance, the department shall determine the estimated approved cost of such project, and compute the amount of the urban renewal assistance grant to which the city or town would be entitled under section fifty-five.

Within a reasonable time after receipt of such application, the department shall notify such city or town of its approval or rejection thereof, and, in the event of its rejection, of the reasons therefor. If the department rejects such application, the city or town may elect to proceed with such project without the benefit of said urban renewal assistance grant. Notice of approval hereunder shall be accompanied by a statement of the estimated approved cost as determined by the department and an estimate of the amount of urban renewal assistance grant to which such city or town may be entitled under the provisions of section fifty-five.

The final approved cost shall be determined by the department

within a reasonable time after the completion of the urban renewal project by the urban renewal agency.

If the determination of the final approved cost is delayed because the project is not completed, the payments preceding determination of the final approved cost may be based upon the estimated approved cost, and adjustments shall be made in the payment or payments which are made subsequent to the determination of the final approved cost.

Section 55. From time to time, the department shall certify to the comptroller, and the state treasurer shall, within thirty days after each such certification, pay to the several cities and towns, from any amounts appropriated therefor, the amounts due them in accordance with the following clauses:—

(*a*) Certification may be made only of projects with respect to which contracts for federal capital grants under Title I of the Federal Housing Act of 1949, as amended, have been signed.

(*b*) The total urban renewal assistance grant for any approved federally-aided project as defined in clause (*a*) shall not exceed one half of the local share of the contribution required from the municipality under the federal capital grant contract or more than one sixth of the net project cost when the municipality pays for administrative planning and legal expenses as a part of the gross project cost.

(*c*) The total urban renewal assistance grant to be paid under the provisions of this section shall be payable in twenty equal annual installments, except that the department may adjust the annual payment upon final determination of the net cost of each approved project.

(*d*) The total amount of urban renewal assistance grants to be paid under the provisions of this section shall not exceed two million dollars in any one fiscal year or a total of forty million dollars in the aggregate.

Section 56. The commonwealth, acting by and through the department, may contract with the cities and towns of the commonwealth, acting by and through urban renewal agencies to provide financial assistance for residential, commercial or industrial urban renewal projects as authorized by the provisions of this chapter. Such state financial assistance may be provided only for projects which are to be redeveloped for residential, commercial or industrial reuse, and which projects are ineligible for federal capital grants under federal legislation or for which a grant application has been denied. In determining whether a project is rendered ineligible for federal capital-grant assistance, the provisions of federal legislation permitting a limited amount of redevelopment for nonresidential uses need not be considered unless federal funds have been made available under such provisions.

Section 57. The department may make advances of funds to local urban renewal agencies for up to seventy-five per cent of the estimated cost of surveys and plans and administrative expenses in preparation of projects which may be assisted under this section, and contracts for such advances of funds shall be made upon the condition that such advances of funds shall be repaid out of any moneys which

become available to such agency for the undertaking of the project or projects under this section and section fifty-six.

The contracts referred to in section fifty-six shall provide for a state grant-in-aid equal to one half of the net cost of each project as determined by the department. Any such contract shall provide that no state grant-in-aid shall be made until the city or town shall have appropriated the funds required for the entire project cost.

From time to time the department shall certify to the state comptroller, and the state treasurer shall, within thirty days after such certification, pay to the several cities and towns, from any amounts appropriated therefor, the amounts due them in accordance with the provisions of section fifty-six and of the following clauses:—

(*a*) The total state grant-in-aid for any approved project shall not exceed one half of the net cost of project, including advances for surveys, planning and administrative expenses, with respect to which a contract under the provisions of section fifty-six and this section has been signed.

(*b*) The total amount of urban renewal assistance grants to be paid under the provisions of this section shall be payable in twenty equal annual installments, except that the department may adjust the annual payment upon final determination of the net cost of each approved project.

(*c*) The total amount of urban renewal assistance grants to be paid under the provisions of this section shall not exceed one million dollars in any one fiscal year or a total of twenty million dollars in the aggregate, and, within the limits of the maximums herein established, an amount not exceeding two hundred thousand dollars in any one fiscal year may be authorized by the department to be advanced for the estimated cost of surveys, plans and administrative expenses as provided in the first paragraph.

OTHER PROGRAMS.

Section 58. It is hereby declared (*a*) that there exist in certain cities and towns in the commonwealth substandard dwelling houses in urban renewal project areas which constitute a serious and growing menace and create a housing shortage, injurious to the public health, safety, morals and welfare of the residents of the commonwealth, and the declarations heretofore made in this chapter with respect to such areas are hereby reaffirmed; (*b*) that while many of such dwelling houses may require acquisition and clearance as provided in this chapter because their state of deterioration may make impracticable their reclamation by conservation or rehabilitation, others in such areas are in such condition that they may, through the means provided in section fifty-nine, be conserved or rehabilitated in such a manner that the conditions and evils hereinbefore enumerated may be alleviated or eliminated so that such dwelling houses may be returned to or remain in private ownership and be available as decent, safe and sanitary housing; and (*c*) that all powers conferred by said section fifty-nine are for public uses and purposes for which public money may be expended.

Section 59. The commonwealth, acting by and through the department, may enter into a contract or contracts with an operating agency having powers under this section for state financial assistance in the form of a guarantee by the commonwealth of notes and bonds of such agency issued to finance the acquisition and rehabilitation of dwellings within the limits of an urban renewal project area. The guarantee of the commonwealth of such notes and bonds of such agency shall be executed on each note and bond by the commissioner. The amount of notes and bonds guaranteed by the commonwealth under this section shall not exceed twenty million dollars.

In addition to its other powers, an operating agency may plan and undertake the rehabilitation of dwellings within the limits of an urban renewal project area, and may acquire by purchase, deed or grant or take by eminent domain, hold, improve, rent, lease for a period not in excess of five years, with options to lessees or tenants to purchase during such five-year period, grant, sell, convey, as condominiums or otherwise, or deliver possession, of such property in accordance with such terms and conditions as it may determine, and shall have the power to make mortgage loans for the purpose of financing the rehabilitation of dwellings within an urban renewal project area, subject to such regulations as the department may make as to interest rates, maturity dates and other terms and conditions.

A rehabilitation project shall be any work or undertaking involving the rehabilitation of a dwelling or dwellings in an urban renewal project area so as to provide decent, safe and sanitary housing; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, site preparation or improvement.

Whenever the department determines a public emergency or distress no longer exists in a particular city or town, a rehabilitation project, or a part of any such project with the land appurtenant thereto, rehabilitated or reconstructed under this section may, at the direction of the department, be sold for the fair market value thereof, as determined by the department, but not for less than the total of the outstanding obligations of the applicable operating agency with respect to such project if the whole is sold, or not for less than that percentage of the total cost which the cost of the part sold bears to the total cost of the entire project if a part is sold. So long as any notes and bonds issued by the operating agency to finance the cost of such project and guaranteed by the commonwealth are outstanding, the proceeds of any sale of such project shall be paid by the operating agency into the Housing Authority Bonds Sinking Fund and shall be expended from time to time by the state treasurer to pay interest and principal of any notes and bonds issued by such operating agency to finance such project.

Owners of dwellings rehabilitated under this section shall, during the period of five years following the completion of such rehabilitation and in any event during the period any mortgage loan made under this section to finance such rehabilitation is outstanding, and subject to such regulations as the department may establish, give preference in the selection of tenants for such dwellings, first to the individuals

or families in occupancy thereof last prior to such rehabilitation and second to other residents of the city or town in which such dwellings are located; and who are able to pay rents charged other individuals or families for similar or comparable dwellings in the urban renewal project area.

SECTION 2. Sections twenty-three to twenty-six MMM, inclusive, forty-three and forty-four of chapter one hundred and twenty-one of the General Laws are hereby repealed.

SECTION 3. The first sentence of section 7A of chapter 121A of the General Laws is hereby amended by striking out, in lines 8 and 9, as appearing in section 4A of chapter 654 of the acts of 1955, the words "one hundred and twenty-one" and inserting in place thereof the words:—one hundred and twenty-one B.

SECTION 4. The first sentence of section 18B of said chapter 121A, as appearing in section 9 of chapter 647 of the acts of 1953, is hereby amended by striking out, in lines 8 and 9, the words "one hundred and twenty-one" and inserting in place thereof the words:—one hundred and twenty-one B.

SECTION 5. Nothing in this act shall affect the powers, rights, duties or obligations of the commonwealth or of any board, division, department, authority or other political subdivision of the commonwealth under the provisions of sections twenty-six I to twenty-six MMM, inclusive, forty-three or forty-four of chapter one hundred and twenty-one of the General Laws or the validity of any action taken thereunder, on or before the effective date of this act. Without limiting the generality of the foregoing, any project, contract or transaction initiated or entered into by the commonwealth or any board, division, department, authority or other political subdivision thereof which was approved by the persons whose approval was required under the provisions of said sections prior to the effective date of this act shall be valid and may be carried out in accordance with its terms without any further proceedings or approvals under this act. Any project, contract or transaction initiated or entered into by the commonwealth or any board, subdivision, department, authority or other political subdivision thereof which has not been fully approved under the provisions of said sections prior to said effective date need not be reinitiated, but shall require only such further approval or proceedings as are provided under this act in substitution for the approval or proceedings provided under said sections but not obtained or taken prior to the effective date of this act.

A housing authority or redevelopment authority created in any city or town under the provisions of sections twenty-six K or twenty-six QQ of chapter one hundred and twenty-one of the General Laws and existing on the effective date of this act shall be deemed to be, and shall have all the powers, rights, duties and obligations of, the housing authority or redevelopment authority created in such city or town under the provisions of sections three or four, as the case may be, of chapter one hundred and twenty-one B of the General Laws, as inserted by section one of this act; each person serving on the effective date of this act as a member of any such existing housing authority or redevelopment authority in any city or town shall by virtue of this

act and without further appointment or election become a member of the housing authority or redevelopment authority created in such city or town, as the case may be, under the provisions of said chapter one hundred and twenty-one B; and the term of each such member shall continue, unless sooner terminated by reason of death, resignation or removal, until the expiration of the current term to which such members shall have been appointed or elected most recently prior to the effective date of this act.

SECTION 6. All employees of any housing or redevelopment authority who immediately prior to the effective date of this act hold positions classified under chapter thirty-one of the General Laws or have tenure in their positions by reason of the provisions of chapter thirty or chapter one hundred and twenty-one of the General Laws or the provisions of any other law, general or special, shall be transferred to a similar office or position under the housing or redevelopment authority, as the case may be, existing in the same city or town under the provisions of chapter one hundred and twenty-one B of the General Laws; and by such transfer, their civil service, seniority, retirement or other rights shall not be impaired and their term of office shall not be deemed to be interrupted within the meaning of said chapter thirty, thirty-one or one hundred and twenty-one, notwithstanding any change in title or duties, provided that no such employee shall be lowered in rank or compensation.

The term of office of employees of any housing or redevelopment authority who immediately prior to the effective date of this act hold positions not classified under chapter thirty-one of the General Laws or have not acquired tenure in their positions under the provisions of chapter thirty or chapter one hundred and twenty-one of the General Laws or the provisions of any other law, general or special, shall be transferred to a similar office or position under the housing or redevelopment authority as the case may be, existing in the same city or town under the provisions of chapter one hundred and twenty-one B of the General Laws; and by such transfer none of their rights shall be impaired and their term of office shall not be deemed to be interrupted within the meaning of any of said chapters.

Any person who transfers or who has transferred from a housing authority to a redevelopment authority or who transfers or has transferred from a redevelopment authority to a housing authority shall, for the purpose of this act, if said transfer is made without interruption of service, be credited for the period of time in which he was employed by the authority from which he transferred, without loss of the retirement, tenure or any of the rights to which such uninterrupted service in the position previously held would have entitled him.

SECTION 7. Section 9 of chapter 23B of the General Laws, as appearing in section 1 of chapter 761 of the acts of 1968, is hereby amended by striking out, in line 4, the words "twenty-six J of chapter one hundred and twenty-one" and inserting in place thereof the words:—one of chapter one hundred and twenty-one B.

SECTION 8. The definition of "Political subdivision" in section 1 of chapter 32 of the General Laws is hereby further amended by striking

out, in lines 3 and 4, as appearing in section 4 of chapter 597 of the acts of 1967, the words "twenty-six L of chapter one hundred and twenty-one" and inserting in place thereof the words:—five of chapter one hundred and twenty-one B.

SECTION 9. Paragraph (*a*) of subdivision (5) of section 28 of said chapter 32 is hereby amended by striking out, in lines 2 and 3, as appearing in section 2 of chapter 150 of the acts of 1957, the words "twenty-six L of chapter one hundred and twenty-one" and inserting in place thereof the words:—five of chapter one hundred and twenty-one B; and by striking out, in line 4, as so appearing, the word "twenty-six QQ" and inserting in place thereof the word:—four.

SECTION 10. The first paragraph of section 5 of chapter 151B of the General Laws is hereby amended by striking out, in lines 3 and 4, as appearing in section 4 of chapter 479 of the acts of 1950, the words "twenty-six FF of chapter one hundred and twenty-one" and inserting in place thereof the words:—thirty-two of chapter one hundred and twenty-one B; and by striking out, in lines 11 and 12 and in line 19, as so appearing, the word "twenty-six FF" and inserting in place thereof, in each instance, the word:—thirty-two.

SECTION 11. The second paragraph of said section 5 of said chapter 151B is hereby amended by striking out, in line 17, as appearing in chapter 483 of the acts of 1967, and in lines 57 and 58, 62, 67 and 73, as appearing in section 2 of chapter 613 of the acts of 1963, the word "twenty-six FF" and inserting in place thereof, in each instance, the word:—thirty-two.

SECTION 12. The third paragraph of said section 5 of said chapter 151B, added by chapter 569 of the acts of 1965, is hereby amended by striking out, in line 3, the word "twenty-six FF" and inserting in place thereof the word:—thirty-two.

SECTION 13. The first sentence of paragraph 2 of section 21 of chapter 168 of the General Laws, as most recently amended by section 2 of chapter 253 of the acts of 1963, is hereby further amended by striking out, in lines 22 and 23, the words "section twenty-six K of chapter one hundred and twenty-one" and inserting in place thereof the words:—sections three and five of chapter one hundred and twenty-one B. *Approved August 21, 1969.*

Chap. 752. AN ACT FURTHER DECREASING THE LIQUIDITY RESERVE IN CO-OPERATIVE BANKS.

Whereas, The deferred operation of this act would tend to defeat its purpose which is to provide forthwith the release of certain funds held by co-operative banks thereby increasing the amount of money available to said banks for loans to members and home owners, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

The first sentence of section 40 of chapter 170 of the General Laws, as appearing in chapter 195 of the acts of 1960, is hereby amended by striking out, in line 4, the word "ten" and inserting in place thereof the word: — eight. *Approved August 22, 1969.*

HOUSE . . . . No. 2863

The Commonwealth of Massachusetts

House of Representatives, May 26, 1955.

The committee on Mercantile Affairs, to whom was recommitted the petition (accompanied by bill, House, No. 1879) of Daniel Tyler, Jr., for legislation relative to urban renewal projects under the housing authority law, report the accompanying bill (House, No. 2863).

For the committee,

FRED C. HARRINGTON.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Five.

AN ACT TO PROVIDE FOR URBAN RENEWAL PROJECTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 26 of chapter 121 of the General Laws is hereby amended by striking out the two paragraphs added by section 2 of chapter 643 of the acts of 1954.

SECTION 2. Section 26I of said chapter 121, as most recently amended by section 2 of chapter 668 of the acts of 1953, is hereby further amended by striking out, in line 2, the word "forty" and inserting in place thereof the word: — forty-six.

SECTION 3. Section 26J of said chapter 121, as amended by section 3 of said chapter 668, is hereby further amended by striking out, in line 3, the letters "VV" and inserting in place thereof the letters: — BBB.

SECTION 4. Said chapter 121 is hereby amended by striking out section 26WW, inserted by section 1 of said chapter 668, and inserting in place thereof, under the caption "Part VIII. Urban Renewal Projects," the following six sections: —

Section 26WW. Legislative Declaration of Necessity. — It is hereby declared (*a*) that there exists in certain cities and towns in this commonwealth substandard, decadent or blighted open areas which constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of

the commonwealth, and the declarations heretofore made in the housing authority law with respect to such areas are hereby reaffirmed; (*b*) that, while certain of such areas, or portions thereof, may require acquisition and clearance as provided in other parts of the housing authority law because the state of deterioration may make impracticable the reclamation of such areas or portions by conservation or rehabilitation, others of such areas, or portions thereof, are in such condition that they may, through the means provided in sections twenty-six XX to twenty-six BBB, inclusive, be conserved or rehabilitated in such a manner that the conditions and evils hereinbefore enumerated may be alleviated or eliminated; and (*c*) all powers conferred by said sections twenty-six XX to twenty-six BBB, inclusive, are for public uses and purposes for which public money may be expended and said powers exercised; and the necessity in the public interest for the provisions of said sections twenty-six XX to twenty-six BBB, inclusive, is hereby declared as a matter of legislative determination.

Section 26XX. Initiation of Urban Renewal Program. — Sections twenty-six YY to twenty-six BBB, inclusive, shall not take effect or be operative in any city or town until, in the case of a city having a Plan D or Plan E charter, the city council with the approval of the city manager, in the case of any other city, the city council with the approval of the mayor, and in the case of a town, an annual or special town meeting, shall have determined that there exists in such city or town the need for an urban renewal program or programs therein.

Section 26YY. Urban Renewal Projects. — Urban renewal projects shall be planned, undertaken and carried out in a city or town by the redevelopment authority thereof, if such an authority has been organized, otherwise by the housing authority thereof. Urban renewal projects may include undertakings and activities for the elimination (and for the prevention of the development or spread) of substandard, decadent or blighted

open areas, and may involve any work or undertaking for such purpose constituting a land assembly and redevelopment project or any rehabilitation or conservation work or any combination of such undertaking or work. As used in sections twenty-six XX to twenty-six BBB, inclusive, "rehabilitation or conservation work" may include the restoration and renewal of a substandard, decadent or blighted open area, or portion thereof, in accordance with an urban renewal plan by (1) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements; (2) acquisition of real property and demolition, removal or rehabilitation of buildings and improvements thereon where necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; (3) installation, construction or reconstruction of streets, utilities, parks, playgrounds and other improvements necessary for carrying out the objectives of the urban renewal project; and (4) the disposition, for uses in accordance with the objectives of the urban renewal project, of any property or part thereof acquired in the area of such project; provided, that such disposition shall be in the manner prescribed in the housing authority law for the disposition of property in a land assembly and redevelopment project area.

Section 26ZZ. Urban Renewal Plan. — Any urban renewal project undertaken pursuant to the preceding section shall be undertaken in accordance with an urban renewal plan for the area of the project. As used in sections twenty-six YY to twenty-six BBB, inclusive, an "urban renewal plan" shall be construed to mean a plan, as it exists from time to time, for an urban renewal project, which plan (1) shall conform to the general plan for the municipality as a whole, and (2)

shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements and rehabilitation as may be proposed to be carried out in the area of the urban renewal project, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements. No urban renewal project shall be undertaken until the urban renewal plan therefor has been submitted to, and approved by, the housing board; and no urban renewal plan shall be submitted to the housing board unless the same has been approved by the city council of a city or the selectmen of a town after due notice and a public hearing.

The housing board shall not approve any urban renewal plan unless the planning board established under the provisions of section seventy or eighty-one A of chapter forty-one for the city or town where the project is located, shall have found and the housing board shall have concurred in such finding, or, if no planning board exists in such city or town, unless the division of planning in the department of commerce shall have found and the housing board shall have concurred in such finding that the urban renewal plan is based upon a local survey and conforms to a comprehensive plan for the locality as a whole. The housing board shall likewise not approve any urban renewal plan unless it shall have found (*a*) the project area would not by private enterprise alone, and without the aid sought from the federal government or other subsidy, be made available for urban renewal; (*b*) the proposed land uses and building requirements in the project areas in the locality where the project area is located will afford maximum opportunity to privately financed urban renewal consistent with the sound needs of the locality as a whole; (*c*) the financial plan is sound; (*d*) the

project area is a substandard, decadent or blighted open area; and (*e*) the urban renewal plan is sufficiently complete, as required by this section. The housing board shall, within thirty days after submission of the plan, give written notice to the redevelopment or housing authority of its decision with respect to such plan. If the housing board shall disapprove any such plan, it shall state in writing in such notice its reasons for disapproval. Unless and until written approval of such plan is obtained, an urban renewal project shall not be undertaken; provided, however, that when the location of a proposed urban renewal project has been determined, the redevelopment or housing authority may, without awaiting the approval of the housing board, proceed, by option or otherwise, to obtain control of such property within the urban renewal project area as is necessary to be acquired by the redevelopment or housing authority to carry out the urban renewal plan; but it shall not, without the approval of the board, unconditionally obligate itself to purchase any such property. A plan which has not been approved by the housing board when submitted to it may be again submitted to it with such modifications as are necessary to meet its objections.

Section 26AAA. Powers with Respect to Urban Renewal. — A redevelopment or housing authority proceeding under sections twenty-six YY to twenty-six BBB, inclusive, shall have all the powers necessary or convenient to undertake and carry out urban renewal plans and urban renewal projects, including power to acquire and dispose of property, to issue bonds and other obligations, to borrow and accept grants from the federal government or other sources, and to exercise the other powers which the housing authority law confers on a housing or redevelopment authority with respect to land assembly and redevelopment projects. In connection with the planning and undertaking of any urban renewal plan or urban renewal project, the redevelopment or housing authority and the city or

town and all public and private officers, agencies and bodies shall have all the rights, powers, privileges and immunities which they have with respect to a land assembly and redevelopment plan or a land assembly and redevelopment project, in the same manner as though all of the provisions of the housing authority law applicable to a land assembly and redevelopment plan or a land assembly and redevelopment project were applicable to an urban renewal plan or urban renewal project; provided, that for such purpose the words "land assembly and redevelopment" as used in the housing authority law (except in section twenty-six J) shall be construed to include "urban renewal." In addition to the surveys and plans which an authority is otherwise authorized to make, a redevelopment or housing authority is hereby specifically authorized to make (i) plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, and (ii) plans for the enforcement of laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements, and to the compulsory repair, rehabilitation, demolition or removal of buildings and improvements. Such authority is further authorized to develop, test and report methods and techniques, and carry out demonstrations and other activities for the prevention and the elimination of slums and urban blight.

Section 26BBB. Assistance to Urban Renewal. — Any city or town or other public body is hereby authorized (without limiting any provision in the preceding section) to do any and all things necessary to aid and cooperate in the planning and undertaking of an urban renewal project in the area in which such city or town or public body is authorized to act, including the furnishing of such financial and other assistance as the city or town or public body is authorized by the housing authority law to furnish for or in connection with a land assembly and redevelopment plan or project. A redevelopment or housing authority is hereby au-

thorized to delegate to a city or town or other public body or to any board or officer of such city, town or other public body any of the powers or functions of the authority with respect to the planning or undertaking of an urban renewal project in the area in which such city, town or other public body is authorized to act, and such city, town or other public body or any board or officer of such city, town or other public body is hereby authorized to carry out or perform such powers or functions for the authority. Any public body is hereby authorized to enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with any other public body or bodies respecting action to be taken pursuant to any of the powers granted by sections twenty-six YY to twenty-six BBB, inclusive, including the furnishing of funds or other assistance in connection with an urban renewal plan or urban renewal project.

A redevelopment or housing authority, to the greatest extent it determines to be feasible in carrying out the provisions of sections twenty-six YY to twenty-six BBB, inclusive, shall afford maximum opportunity, consistent with the sound needs of the city or town as a whole, for the rehabilitation or redevelopment of substandard, decadent or blighted open areas by private enterprise.

SECTION 5. Said chapter 121 is hereby further amended by inserting after section 26BBB, as appearing in section 4 of this act, the following section under the caption "Part IX. Effect of Partial Invalidity": —

Section 26CCC. Separability of Provisions. — The provisions of sections twenty-six I to twenty-six BBB, inclusive, are hereby declared to be severable, and if any such provision or the application of such provision to any person or circumstances shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining

provisions of said sections or the application of such provisions to persons or circumstances other than those as to which it is held invalid. It is hereby declared to be the legislative intent that said sections would have been adopted had such invalid or unconstitutional provisions not been included therein.

SECTION 6. The provisions of this act shall be construed to be in addition to and supplementary of the powers conferred by other provisions of the law, including other provisions of the housing authority law; and nothing in this act shall be construed to limit the power of housing authorities or redevelopment authorities to carry out low rent housing projects or land assembly and redevelopment projects pursuant to any provision of the housing authority law.


KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title III. Laws Relating to State Officers(Ch. 29-30b)
Chapter 30B. Uniform Procurement Act (Refs & Annos)

M.G.L.A. 30B § 1

§ 1. Application of chapter

Effective: November 7, 2016

Currentness

(a) This chapter shall apply to every contract for the procurement of supplies, services or real property and for disposing of supplies or real property by a governmental body as defined herein.

(b) This chapter shall not apply to:

(1) a contract subject to the provisions of section thirty-nine M of chapter thirty, section 11C or section 11*I* of chapter 25A or sections forty-four A to forty-four J, inclusive, of chapter one hundred and forty-nine;

(2) a contract subject to the provisions of sections thirty-eight A ½ to thirty-eight *O*, inclusive, of chapter seven;

(3) an intergovernmental agreement subject to the provisions of section four A of chapter forty;

(4) a transaction with the commonwealth, except as pertains to subsection (i) of section 16;

(5) a contract for the purchase of materials, under specifications of the state department of highways, and at prices established by the department, pursuant to advertising and bidding for such purpose, in connection with work to be performed under the provisions of chapter eighty-one or chapter ninety;

(6) a contract for the advertising of required notices;

(7) an agreement between agencies, boards, commissions, authorities, departments or public instrumentalities of one city or town;

(8) an agreement for the provision of special education pursuant to chapter seventy-one B and regulations promulgated pursuant thereto;

(9) a contract to purchase supplies or services from, or to dispose of supplies to, any agency or instrumentality of the federal government, the commonwealth or any of its political subdivisions or any other state or political subdivision thereof;

(10) the issuance of bonds, notes or securities in accordance with procedures established by law;

(11) contracts and investments made in accordance with sections fifty-seven or fifty-seven A of chapter thirty-five or sections sixty-seven or sixty-seven A of chapter forty-four;

(12) a contract for the procurement of insurance or surety bonds, including an agreement subject to the provisions of sections one to sixteen, inclusive, of chapter forty M or the provisions of sections twenty-five E to twenty-five U, inclusive, of chapter one hundred and fifty-two;

(13) contracts for the services of expert witnesses for use in an adjudicatory proceeding or litigation or in anticipation thereof;

(14) any contracts or agreements entered into by a municipal gas or electric department governed by a municipal light board, as defined by section fifty-five of chapter one hundred and sixty-four or by a municipal light commission, as defined by section fifty-six A of said chapter one hundred and sixty-four; provided, however, that any such board or commission may accept the provisions of this chapter by a majority vote of its members;

(15) contracts with labor relations representatives, lawyers, or certified public accountants;

(16) contracts with physicians, dentists, and other health care individuals or persons including nurses, nurses' assistants, medical and laboratory technicians, health care providers including diagnosticians, social workers, psychiatric workers, and veterinarians;

(17) a contract for snow plowing by a governmental body;

(18) a contract or lease by a governmental body of its boat slips, berths, or moorings;

(19) a contract for retirement board services; provided, however, that the procurements shall take place under section 23B of chapter 32;

(20) a contract which is funded by proceeds derived from a gift to a governmental body or a trust established for the benefit of a governmental body;

(21) a contract for the towing and storage for motor vehicles;

(22) a contract to provide job-related training, educational or career development services to the employees of a governmental body;

<[There is no clause (23).]>

(24) a contract for ambulance service by a governmental body;

(25) a contract to sell lease or acquire residential, institutional, industrial or commercial real property by a public or quasi-public economic development agency or urban renewal agency engaged in the development and disposition of said real property in accordance with a plan approved by the appropriate authorizing authority;

(26) a contract for the collection of delinquent taxes or for the services of a deputy tax collector;

(27) contracts or agreements entered into by a municipal hospital or a municipal department of health;

(28) contracts entered into by a governmental body on behalf of a hospital owned by such governmental body where such contract is funded by expenditures from an operations account, so-called, or a special account, established pursuant to a special act that is maintained for the benefit of and designated with the name of such hospital;

(29) any contracts, agreements or leases entered into by a municipal airport commission established under the provisions of section fifty-one E of chapter ninety; provided, however, that such contracts, agreements or leases apply to aviation uses or the sale of aviation fuel;

(30) a contract for the collection, transportation, receipt, processing or disposal of solid waste, recyclable or compostable materials;

(31) an agreement for the purchase of photography services entered into by a public school;

(32) energy aggregation contracts entered into by a political subdivision of the commonwealth for energy or energy related services arranged or negotiated by such subdivision on behalf of its residents;

(32A) contracts with architects, engineers and related professionals;.

(33) energy contracts entered into by a city or town or group of cities or towns or political subdivisions of the commonwealth, for energy or energy related services; provided, however, that within 15 days of the signing of a contract for energy or energy related services by a city, town, political subdivision, or group of cities, towns or political subdivisions said city, town, political subdivision, or group of cities, towns or political subdivisions shall submit to the department of public utilities, the department of energy resources, and the office of the inspector general a copy of the contract and a report of the process used to execute the contract; provided, further, that for any such contract determined to contain confidential information under subclause (r) of section 7 of chapter 4, the governmental body shall instead maintain a record of the procurement processes and awards for 6 years after the date of the final payment. The governmental body shall make such records available to the inspector general upon request; provided, however, that the inspector general shall not disclose said information; or

(34) a contract made in accordance with section 5 of chapter 111C.

(c) This chapter shall be deemed to have been complied with on all purchases made under the provisions of sections twenty-two A and twenty-two B of chapter seven when one political subdivision, as defined in said section twenty-two A, acting on behalf of other political subdivisions, complies with the provisions of this chapter, or when purchases are made from a vendor pursuant to a contract with the commonwealth for the item or items being purchased.

(d) Where a procurement involves the expenditure of federal assistance or contract funds, the provisions of this chapter shall not apply to the extent that such provisions prevent compliance with mandatory provisions of federal law and regulations.

(e) Notwithstanding the provisions of any general or special law to the contrary, a governmental body may enter into a contract, in conformance with this chapter, for the construction and for services at a facility owned by a private party or parties, whether such facility will be located on public or private land for the disposal, recycling, composting or treatment of solid waste, sewage, septage or sludge without said contract being subject to the competitive bid process as set forth in sections thirty-eight A ½ to thirty-eight *O*, inclusive, of chapter seven, section thirty-nine M of chapter thirty, or sections forty-four A to forty-four J, inclusive, of chapter one hundred and forty-nine; provided, however, that this subsection shall not apply to a procurement of proprietary environmental technology in accordance with subsection (5) of section forty-four A of chapter one hundred and forty-nine.

(f) This chapter shall be deemed to have been complied with on all purchases made from a vendor pursuant to a General Services Administration federal supply schedule that is available for use by governmental bodies.

Credits

Added by St.1989, c. 687, § 3. Amended by St.1991, c. 138, §§ 110 to 112; St.1991, c. 404; St.1991, c. 495, § 13; St.1991, c. 552, § 20; St.1992, c. 153, §§ 11, 12; St.1992, c. 286, §§ 105 to 109; St.1994, c. 180; St.1995, c. 131, § 1; St.1996, c. 450, §§ 80, 81; St.1997, c. 164, §§ 57, 58; St.2000, c. 54, § 2; St.2000, c. 159, § 65; St.2006, c. 11, § 3, eff. Feb. 3, 2006; St.2008, c. 169, §§ 46, 47, eff. July 2, 2008; St.2008, c. 445, § 2, eff. Mar. 30, 2009; St.2009, c. 25, §§ 40, 41, eff. July 1, 2009; St.2010, c. 188, §§ 4 to 6, eff. July 27, 2010; St.2011, c. 176, § 4, eff. Feb. 16, 2012; St.2016, c. 218, § 5, eff. Nov. 7, 2016.

Notes of Decisions (9)

M.G.L.A. 30B § 1, MA ST 30B § 1
Current through Chapter 87 of the 2020 2nd Annual Session

End of Document

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title VII. Cities, Towns and Districts (Ch. 39-49a)
Chapter 40. Powers and Duties of Cities and Towns (Refs & Annos)

M.G.L.A. 40 § 14

§ 14. Purchase of land; conditions; limitations; definition

Currentness

The aldermen of any city, except Boston, or the selectmen of a town may purchase, or take by eminent domain under chapter seventy-nine, any land, easement or right therein within the city or town not already appropriated to public use, for any municipal purpose for which the purchase or taking of land, easement or right therein is not otherwise authorized or directed by statute; but no land, easement or right therein shall be taken or purchased under this section unless the taking or purchase thereof has previously been authorized by the city council or by vote of the town, nor until an appropriation of money, to be raised by loan or otherwise, has been made for the purpose by a two thirds vote of the city council or by a two thirds vote of the town, and no lot of land shall be purchased for any municipal purpose by any city subject to this section for a price more than twenty-five per cent in excess of its average assessed valuation during the previous three years.

The words "municipal purpose", as used in this section, shall include any such land, easement or right therein within the city or town, so purchased or taken by eminent domain for the purpose of conveying or granting the same to the commonwealth for the use of a regional community college.

Credits

Amended by St.1933, c. 283, § 1; St.1967, c. 59, § 3.

Notes of Decisions (75)

M.G.L.A. 40 § 14, MA ST 40 § 14
Current through Chapter 87 of the 2020 2nd Annual Session

End of Document

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title VII. Cities, Towns and Districts (Ch. 39-49a)
Chapter 43. City Charters (Refs & Annos)

M.G.L.A. 43 § 30

§ 30. Purchase or taking of land

Currentness

At the request of any department, and with the approval of the mayor and city council under Plan A, B, C or F, or with the approval of the city manager and the city council under Plan D or E, the city council may, in the name of the city, purchase, or take by eminent domain, under chapter seventy-nine, any land within its limits for any municipal purpose, and, without the request of any department, but with like approval, the city council may, in the name of the city, purchase or take by eminent domain, under chapter seventy-nine, any land within its limits for the purpose of conveying the same, with or without consideration, to the commonwealth for the use of a regional community college. Whenever the price proposed to be paid for land for any municipal purpose is more than twenty-five per cent higher than its average assessed valuation during the previous three years the land shall not be purchased, but shall be taken as aforesaid. No land shall be taken or purchased until an appropriation by loan or otherwise for the general purpose for which land is needed has been made by the city council, by a two thirds vote of all its members; nor shall a price be paid in excess of the appropriation, unless a larger sum is awarded by a court of competent jurisdiction. All proceedings in the taking of land shall be under the advice of the law department, and a record thereof shall be kept by said department.

Credits

Amended by St.1938, c. 378, § 11; St.1948, c. 459, § 7; St.1959, c. 448, § 11; St.1967, c. 59, § 2.

Notes of Decisions (10)

M.G.L.A. 43 § 30, MA ST 43 § 30
Current through Chapter 87 of the 2020 2nd Annual Session

End of Document

Massachusetts General Laws Annotated
Constitution or Form of Government for the Commonwealth of Massachusetts [Annotated]
Part the First a Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

M.G.L.A. Const. Pt. 1, Art. 10

Art. X. Right of protection and duty of contribution; taking of property; consent to laws; taking of property for highways and streets

Currentness

ART. X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

The legislature may by special acts for the purpose of laying out, widening or relocating highways or streets, authorize the taking in fee by the commonwealth, or by a county, city or town, of more land and property than are needed for the actual construction of such highway or street: provided, however, that the land and property authorized to be taken are specified in the act and are no more in extent than would be sufficient for suitable building lots on both sides of such highway or street, and after so much of the land or property has been appropriated for such highway or street as is needed therefor, may authorize the sale of the remainder for value with or without suitable restrictions.

Notes of Decisions (2004)

M.G.L.A. Const. Pt. 1, Art. 10, MA CONST Pt. 1, Art. 10
Current through amendments approved February 1, 2020

End of Document


KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 121B. Housing and Urban Renewal (Refs & Annos)

M.G.L.A. 121B § 1

§ 1. Definitions

Effective: November 4, 2014

Currentness

The following words, whenever used in this chapter shall, unless a different meaning clearly appears from the context, have the following meanings:--

"Acquisition cost", the amount prudently required to be expended by an operating agency in acquiring a housing or clearance project.

"Blighted open area", a predominantly open area which is detrimental to the safety, health, morals, welfare or sound growth of a community because it is unduly costly to develop it soundly through the ordinary operations of private enterprise by reason of the existence of ledge, rock, unsuitable soil, or other physical conditions, or by reason of the necessity for unduly expensive excavation, fill or grading, or by reason of the need for unduly expensive foundations, retaining walls or unduly expensive measures for waterproofing structures or for draining the area or for the prevention of the flooding thereof or for the protection of adjacent properties and the water table therein or for unduly expensive measures incident to building around or over rights-of-way through the area, or for otherwise making the area appropriate for sound development, or by reason of obsolete, inappropriate or otherwise faulty platting or subdivision, deterioration of site improvements or facilities, division of the area by rights-of-way, diversity of ownership of plots, or inadequacy of transportation facilities or other utilities, or by reason of tax and special assessment delinquencies, or because there has been a substantial change in business or economic conditions or practices, or an abandonment or cessation of a previous use or of work on improvements begun but not feasible to complete without the aids provided by this chapter, or by reason of any combination of the foregoing or other condition; or a predominantly open area which by reason of any condition or combination of conditions which are not being remedied by the ordinary operations of private enterprise is of such a character that in essence it is detrimental to the safety, health, morals, welfare or sound growth of the community in which it is situated.

"Clearance project", the demolition and removal of buildings from any substandard, decadent or blighted open area by an operating agency in accordance with subsection (d) of section twenty-six.

"Community development project", a work or undertaking on property which is publicly owned or managed for the installation, improvement, construction, alteration, enlargement, repair, rehabilitation, remodeling or reconstruction of buildings or other structures, facades, streets, roadways, thoroughfares, sidewalks, rail spurs, utility distribution system, water and sewer lines, parks, playgrounds, for site preparation and improvements, including demolition of existing structures, relocation assistance and for other like improvements necessary or desirable for the revitalization of the area in which the

project is located or the acquisition of property on which any of the foregoing is being or will be undertaken.

"Community renewal program", any planning work or other undertaking (1) to identify substandard, decadent, and blighted open areas and other deteriorated or deteriorating areas, (2) to measure the nature and degree of blight and blighting factors within such areas, (3) to determine the financial, relocation, and other resources needed and available to restore and renew such areas, (4) to identify potential project areas and, where feasible, types of action proposed within such areas, and (5) scheduling or programming of urban renewal projects and other renewal activities in the community.

"Decadent area", an area which is detrimental to safety, health, morals, welfare or sound growth of a community because of the existence of buildings which are out of repair, physically deteriorated, unfit for human habitation, or obsolete, or in need of major maintenance or repair, or because much of the real estate in recent years has been sold or taken for nonpayment of taxes or upon foreclosure of mortgages, or because buildings have been torn down and not replaced and under existing conditions it is improbable that the buildings will be replaced, or because of a substantial change in business or economic conditions, or because of inadequate light, air, or open space, or because of excessive land coverage or because diversity of ownership, irregular lot sizes or obsolete street patterns make it improbable that the area will be redeveloped by the ordinary operations of private enterprise, or by reason of any combination of the foregoing conditions.

"Department", department of housing and community development.

"Development cost", the cost of construction or acquisition of a housing project, as determined by the department, including the costs of planning, engineering, surveying and studies; of acquisition of real estate, including the buildings thereon, site preparation, construction, reconstruction, alteration and repair; of interest on notes issued to temporarily finance the project; and of all other fees and expenses reasonably necessary and incurred or to be incurred in connection with construction or acquisition of a housing project.

"Elderly persons of low income", persons having reached the age of sixty or over whose annual income is less than the amount necessary to enable them to maintain decent, safe and sanitary housing.

"Families of low income", families and persons whose net annual income is less than the amount necessary to enable them to obtain and maintain decent, safe and sanitary housing.

"Federal government", the United States of America, and any agency or instrumentality corporate or otherwise of the United States of America.

"Federal legislation", any legislation of the Congress of the United States relating to federal assistance for urban renewal, clearance of substandard, decadent or blighted open areas, city or regional planning, rehabilitation, code enforcement, housing, relocation or any related matters, and any regulations authorized thereunder.

"Handicapped persons of low income", persons whose annual net income is less than the amount necessary to enable them to maintain decent, safe and sanitary housing and who have been determined, pursuant to regulations issued by the director of housing and community development to have an impairment which is expected to be of long continued and indefinite duration, which substantially impedes the ability to live independently in conventional housing and which is of such a nature that such ability could be improved by more suitable housing conditions. Except as required by federal law, and notwithstanding any other law to the contrary, a history of alcohol or substance use shall not constitute a qualifying impairment. Eligibility for protection as a handicapped or disabled person under state or federal anti-discrimination laws does

not constitute a guarantee of eligibility for housing as a handicapped person of low income as defined herein. A person who has a handicap as defined in paragraph seventeen of section one of chapter one hundred and fifty-one B shall still meet the definition set out herein in order to be eligible for housing as a handicapped person of low income.

"Housing authority", a public body politic and corporate created pursuant to section three or corresponding provisions of earlier laws.

"Housing project", such projects for housing as a housing authority is authorized to undertake under sections twenty-five to thirty-three, inclusive.

"Low rent housing", decent, safe and sanitary dwellings within the financial reach of families or elderly persons of low income, and developed and administered to promote serviceability, efficiency, economy and stability; together with all necessary appurtenances of such dwellings.

"Low rent housing project", (1) a clearance project; or (2) any work or undertaking to provide decent, safe and sanitary dwellings, apartments or other living accommodations for families of low income, which work or undertaking may include buildings, land, equipment, facilities, and other real or personal property for necessary, convenient and desirable appurtenances, public or private ways, sewers, water supply, parks, site preparation or improvement, or administrative, community, health, recreational, welfare, or other facilities; or (3) the purchase of, or acquisition, otherwise than by eminent domain, of the right to use, completed dwelling units which have been recently constructed, reconstructed or remodeled (whether condominium units, individual buildings part of a larger development, or a portion of the units in a multifamily development); or (4) any combination of the foregoing. Such a project may include the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and other work performed in connection therewith, but construction activity in connection with a project may be confined to the reconstruction, remodeling or repair of existing buildings.

"Mayor", the city manager of the city in all cities having a Plan D or Plan E charter and the duly elected mayor of the city in all other cities. The mayor is hereby designated as the chief executive of the locality for purposes of any approval or action of such officer required by federal legislation.

"Municipal officers", in the case of all cities, the city council with the approval of the mayor, and in the case of all towns, the board of selectmen with the approval of the town manager, if any. The municipal officers are hereby designated as the local governing body for purposes of any approval or action of such body required by federal legislation.

"Operating agency", a housing authority or redevelopment authority.

"Redevelopment authority", a public body politic and corporate created pursuant to section four or corresponding provisions of earlier laws.

"Relocation payments", voluntary payments whether or not required by federal legislation made by an operating agency as reimbursement or compensation for the reasonable moving expenses necessarily incurred and any actual, direct loss of property, except good will or profit, suffered by individuals, families, business concerns and nonprofit organizations, resulting from displacement on or after August twelfth, nineteen hundred and sixty-five, if such displacement is reasonably required to carry out an urban renewal plan or because of the acquisition of property by an operating agency.

Such relocation payments shall not include reimbursement or compensation for any expenses or losses for which reimbursement or compensation would be otherwise made, nor shall any person have any right of action for relocation payments, except as provided by federal legislation or chapter seventy-nine A.

"Relocation project", any work or undertaking for providing decent, safe and sanitary dwellings for persons or families displaced by any urban renewal project or other public improvement by the commonwealth or any city, town or other body politic and corporate of the commonwealth.

"Substandard area", any area wherein dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities or any combination of these factors, are detrimental to safety, health or morals.

"Tenant member", a member of the board of the housing authority who is directly assisted by that housing authority pursuant to this chapter.

"Urban renewal agency", the agency described in section nine.

"Urban renewal plan", a detailed plan, as it may exist from time to time, for an urban renewal project, which plan may comply with all requirements from time to time prescribed by federal legislation in order to qualify an urban renewal project for federal financial assistance and which plan shall (1) conform to the general plan for the municipality as a whole and be consistent with any definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational, educational and community facilities and other public improvements; (2) be sufficiently complete to indicate the boundaries of the area, such land acquisition, such demolition, removal, and rehabilitation of structures, and such redevelopment and general public improvements as may be proposed to be carried out within such area, zoning and planning changes, if any, and proposed land uses, maximum densities and building requirements; and (3) indicate or be accompanied by materials indicating the proposed method for relocation of persons and organizations to be displaced by the project and the availability of and means by which there will be provided dwelling units for such persons substantially equal in number to the number of dwelling units to be rendered temporarily or permanently uninhabitable as a result of carrying out the project. In any case where an educational institution or a hospital is located in or near an urban renewal project area, the urban renewal plan for such project, or a development plan prepared by the hospital or educational institution and approved by the urban renewal agency after due notice and public hearing, may include plans for the development of land, buildings and structures adjacent to or in the immediate vicinity of the project area acquired or to be acquired and redeveloped or rehabilitated by such educational institution for educational uses or by such hospital for hospital uses. Such plans may comply with all requirements of federal legislation as they may exist from time to time relating to noncash grant-in-aid credits for expenditures of such hospitals or educational institutions. After its approval by the urban renewal agency, as aforesaid, any development plan which is not part of an urban renewal plan shall be approved by the planning board, the municipal officers and the department in the same manner as urban renewal plans, except that no further public hearing shall be required.

"Urban renewal project", a project to be undertaken in accordance with an urban renewal plan (1) for acquisition by an urban renewal agency of the land and all improvements thereon, if any, within a decadent, substandard or blighted open area covered by an urban renewal plan and for assembly or clearance by such agency of the land so acquired; or a project (2) for the elimination and for the prevention of the development or spread of a substandard, decadent or blighted open area covered by an urban renewal plan by means of rehabilitation or conservation work, which work may include the promulgation and enforcement of building and other codes within such area or the restoration and renewal of any such area or portion thereof, including the preservation, restoration or relocation of historical buildings, by carrying out plans for a program of voluntary repair and rehabilitation of buildings or other improvements or by the acquisition by gift, purchase or eminent domain of land and all improvements thereon, if any, and demolition, removal, or rehabilitation of any such improvements whenever

necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, provide land for needed public facilities or otherwise remove or prevent the spread of blight and deterioration; or a project (3) involving any combination of the foregoing types of project. "Urban renewal project" may also include the provision of financial and other assistance in the relocation of persons and organizations displaced as a result of carrying out a project, the installation, construction or reconstruction of public and private ways, public utilities and services, parks, playgrounds, off street parking lots, traffic or fire control and police communications systems and other like improvements necessary for carrying out the objectives of the urban renewal project, together with such site improvements as are necessary for the preparation of any sites for uses in accordance with the urban renewal plan, and making any land or improvements acquired in the area of the project available for redevelopment or rehabilitation by private enterprise or public charitable agencies, including sale, initial leasing or retention by the urban renewal agency itself for residential, recreational, education, hospital, commercial, industrial, public, charitable or other uses in accordance with the urban renewal plan. "Urban renewal project" may also include the construction by a housing authority of any of the buildings, for residential use, contemplated by the urban renewal plan and the repair, removal or rehabilitation by an operating agency of any of the buildings, structures or other improvements located in the area covered by the urban renewal plan and which, under such plan, are to be repaired, moved or rehabilitated. "Urban renewal project" may also include acquisition by any means other than eminent domain and not involving public expenses of land outside of but adjacent to or in the immediate vicinity of an urban renewal project to be developed for hospital or educational uses under the urban renewal plan, whenever such acquisition is for the purpose of making such land subject to the urban renewal plan and the hospital or educational institution involved consents thereto. The term "redevelopment" shall include "development".

"Urban Revitalization and Development Project", any urban renewal project undertaken after January first, nineteen hundred and eighty-six for such residential, commercial, or industrial redevelopment projects as the department deems appropriate.

"Veteran", any person who is a veteran as defined in clause Forty-third of section seven of chapter four. The word "veteran" as used herein shall also include the spouse, surviving spouse, parent or other dependent of such person.

Credits

Added by St.1969, c. 751, § 1. Amended by St.1970, c. 812, § 1; St.1973, c. 1215, § 15A; St.1975, c. 163, §§ 21, 22; St.1976, c. 4, § 1; St.1977, c. 815, § 4; St.1981, c. 789, § 1; St.1985, c. 748, § 18; St.1986, c. 584; St.1991, c. 405, § 2; St.1995, c. 179, §§ 3, 4; St.1996, c. 151, § 279; St.1996, c. 204, § 32; St.1998, c. 161, § 454; St.2014, c. 235, § 1, eff. Nov. 4, 2014.

Notes of Decisions (9)

M.G.L.A. 121B § 1, MA ST 121B § 1
Current through Chapter 64, except Chapter 47 of the 2019 1st Annual Session

End of Document

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 121A. Urban Redevelopment Corporations (Refs & Annos)

M.G.L.A. 121A § 2

§ 2. Declaration of public necessity; acquisition and regulation of private property

Currentness

It is hereby declared that blighted open, decadent or sub-standard areas exist in certain cities and towns in this commonwealth, and that each of such areas constitutes a serious and growing menace, injurious and inimical to the safety, health, morals and welfare of the residents of the commonwealth and the sound growth of the communities therein; that the existence of each of such areas contributes substantially to the spread of disease and crime, necessitating excessive and disproportionate expenditure of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment, and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities, constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities and towns, and retards the provision of residential, commercial and industrial buildings and other improvements; that each of such areas decreases the value of private investments and threatens the sources of public revenue and the financial stability of communities; that because of the economic and social interdependence of different communities and of different areas within single communities the redevelopment of land not only in sub-standard areas but also in blighted open and decadent areas in accordance with a comprehensive plan to promote the sound growth of the community is necessary in order to achieve permanent and comprehensive elimination of existing slums and sub-standard, decadent and blighted conditions and to prevent the recurrence of such slums or sub-standard, decadent or blighted conditions or their development in other parts of the community or in other communities; and that the redevelopment of blighted open areas promotes the clearance of sub-standard and decadent areas and prevents their creation and occurrence; that the menace of blighted open, decadent or sub-standard areas is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the development of property for the purpose of eliminating blighted open, decadent or sub-standard conditions thereon and preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, and disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by housing or redevelopment authorities and any assistance which may be given by cities and towns or any other public bodies in connection therewith, are public uses and purposes for which the aids herein provided may be given, public money expended, and the power of eminent domain exercised; that a public exigency exists which makes the use, acquisition, planning, clearance, rehabilitation or rebuilding of such blighted open, decadent, or sub-standard areas for residential, commercial, industrial, institutional, recreational or governmental buildings and appurtenant or incidental facilities as herein provided a public use and benefit for which private property may be acquired by eminent domain or regulated by wholesome and reasonable orders, laws and directions; and the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

It is hereby further declared that in many areas throughout the commonwealth there is a shortage of decent, safe and sanitary buildings for residential, commercial, industrial, institutional, recreational, or governmental purposes; that this condition is most extreme in communities where blighted open, decadent or sub-standard areas exist; that the aforesaid conditions cannot be corrected by the ordinary operations of private enterprise without the aids herein provided; that the provisions of this chapter will stimulate the investment of private capital in blighted open, decadent or sub-standard areas, and in the construction, maintenance and operation in such areas of needed decent, safe and sanitary residential, commercial, industrial, institutional, and recreational buildings; that the construction, maintenance and operation of such buildings on such land in

such areas will assist in achieving permanent and comprehensive elimination of existing slums, and sub-standard, decadent and blighted conditions and in preventing the recurrence or redevelopment of such conditions.

Credits

Added by St.1945, c. 654, § 1. Amended by St.1953, c. 647, § 1; St.1960, c. 652, § 2.

Notes of Decisions (5)

M.G.L.A. 121A § 2, MA ST 121A § 2
Current through Chapter 87 of the 2020 2nd Annual Session

End of Document

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 121A. Urban Redevelopment Corporations (Refs & Annos)

M.G.L.A. 121A § 6

§ 6. Project approval; procedure

Currentness

Whenever the housing board is asked to approve a project under this chapter, it shall transmit the application to the mayor of the city or the selectmen of the town in which the proposed project is to be located. The mayor or the selectmen, as the case may be, shall forthwith transmit said application to the planning board and, in a city, the city council. If, in any town, there is no planning board, the selectmen shall act as the planning board.

In a town a public hearing shall be held before the planning board and, in a city, before the planning board and the city council jointly, within forty-five days after the transmittal of the application by the mayor or selectmen. Notice of such hearing shall be given pursuant to section six B. Following such hearing, the planning board and, where applicable, the city council, shall thereafter determine that blighted open or decadent or sub-standard conditions exist within the proposed project area; that the project is not in contravention of any zoning, subdivision, health or building ordinance or by-law or rules and regulations of the city or town; whether or not the proposed project conflicts with the master plan of the city or town made by authority of chapter forty-one, if such a plan has been made, determine whether or not such project would be in any way detrimental to the best interests of the public or the city or town or to the public safety and convenience or be inconsistent with the most suitable development of the city or town; whether or not the proposed project will constitute a public use and benefit; the feasibility of the method of relocation and existence or availability of dwellings for displaced families as hereinafter provided; and approve, disapprove with recommended modifications or disapprove the application and issue its report as hereinafter provided.

In a city, the report of the planning board shall be transmitted to the city council within forty-five days after the public hearing and the city council shall, after receipt of the report of the planning board, and within ninety days of the public hearing, transmit its report to the mayor. In a town, the planning board shall transmit its report to the board of selectmen within ninety days after the public hearing.

All such reports shall be in writing, shall approve or disapprove the project within the meaning of this section and shall contain the hearing authority's reasons for such approval or disapproval. All such reports shall be open to public inspection. At the time a report is transmitted, copies shall be sent by the hearing authority by certified mail to all persons who were notified of the hearing as provided in section six B. For the purposes of this section and section six C, the date of transmittal shall be the date of mailing of such copies. In a city, a report of a planning board, whether it approves, disapproves, or disapproves with recommended changes, shall be considered as advisory by the city council, mayor, and housing board.

If the planning board in a city disapproves the project, it may recommend changes in the project to the city council. If the planning board in a town or the city council disapproves the project, it may suggest changes in the project which, if adopted would meet its objections. The applicant may amend such application in accordance with the changes suggested and resubmit the application as amended to the planning board in the case of towns or city council in the case of cities for approval. The

planning board or city council, as the case may be, may approve or disapprove the application as amended, without further public hearing, unless, in its opinion, the proposed change is a fundamental one, in which event the planning board in a town or city council and planning board in a city shall hold a further public hearing and the provisions of this section with respect to an original application shall be applicable thereto.

If the carrying out of a project will involve the taking of property by eminent domain or the destruction or rehabilitation of buildings occupied in whole or in part as dwellings, the planning board and, where applicable, the city council, shall determine whether or not there are, or are being provided in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families displaced from the project area, decent, safe and sanitary dwellings equal in number to the number of, and available to, such displaced families and reasonably accessible to their places of employment and, unless the planning board and, where applicable, the city council find that there is such a feasible method and that such dwellings exist or are being provided, a project shall not be approved.

As used in this section "council" shall mean the city council or similar legislative body of a city and "selectmen" shall mean the board of selectmen or similar legislative body of a town; and whenever the approval of the planning board, council or selectmen is required, such approval shall be deemed given if voted by a majority of the members of such planning board, council or selectmen.

The mayor or selectmen, within thirty days after transmittal of the report from the planning board and where apt the city council, shall transmit all such reports to the housing board, together with a certificate evidencing his or their approval or disapproval of the project.

The housing board, if it receives a certificate evidencing the approval in a city of the mayor and city council or in a town of the selectmen and planning board and if it finds that the conditions exist which warrant the carrying out of the project and that in its opinion the cost of the project will be practicable, and that the construction and use of the project will not be in contravention of any zoning, subdivision, health or building ordinances or by-laws or rules and regulations of the city or town, or of any municipal board, in effect in the location of the proposed project, or of the standards fixed by the board under section four, shall issue a certificate that it approves the project and consents to the formation of a corporation to carry it out. The agreement of association shall not be presented to the state secretary for filing, nor shall he file it, unless it is accompanied by such certificate. If the housing board disapproves the project it shall state its objections in writing and may suggest changes in the project, or in the plans therefor, which, if adopted, would meet its objections. If the applicant determines to proceed in accordance with the changes suggested, the applicant shall amend the application accordingly and resubmit the application as amended to the housing board for its approval. The housing board may approve or disapprove such application as amended unless in its opinion the proposed change is a fundamental one. In such case the housing board shall transmit the application as amended to the mayor of the city or the selectmen of the town in which the project is to be located, and the provisions of this section in respect to an original application shall be applicable thereto.

Whenever the housing board finds that the construction or use of a proposed project would be in contravention of any zoning, subdivision, health or building ordinances or by-laws or rules and regulations of the city or town, or of any municipal board, in effect in the location of the proposed project, and the application filed under section five proposes any waiver, variance or amendment of such ordinances, by-laws, rules or regulations, which if granted or effected would make the proposed project in conformity therewith, the housing board may issue a certificate that it consents to the formation of the corporation subject to such conditions as may be set forth in such certificate with respect to the obtaining of such waiver, variance or amendment. Whenever any such conditional certificate shall be issued by the housing board, the agreement of association may be presented to the state secretary for filing, and he shall file it, and the corporation shall then be for all purposes a corporation organized under this chapter; provided, however, that the corporation shall not enter upon the construction of a project or portion thereof until the housing board shall have issued a certificate to the effect that the corporation has complied with all of the conditions set forth in such conditional certificate which relate to the project, or the portion thereof proposed to be

placed under construction.

Any person aggrieved by any decision made pursuant to this section or the lack thereof may appeal by filing a complaint in superior court for the county in which the project is proposed in accordance with the procedure set forth in section six C.

Credits

Added by St.1945, c. 654, § 1. Amended by St.1953, c. 647, § 2; St.1956, c. 640, § 1; St.1975, c. 827, § 3.

Notes of Decisions (19)

M.G.L.A. 121A § 6, MA ST 121A § 6
Current through Chapter 87 of the 2020 2nd Annual Session

End of Document

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 121A. Urban Redevelopment Corporations (Refs & Annos)

M.G.L.A. 121A § 11

§ 11. Acquisition and sale of land or interests in land; approval

Currentness

Any corporation authorized to undertake or acquire projects under this chapter may lease land or interests in land, including air rights, or may acquire such land or interests therein, including air rights, in fee, by gift, purchase or exchange or with approval of the housing board and unless otherwise provided in this chapter, may take land by eminent domain under chapter seventy-nine for projects approved under section six, except the city of Boston and Springfield; provided, however, that the award of damages under section seven of said chapter seventy-nine shall be made by the housing board. Subject to rules and regulations of the housing board, any such corporation may hold, improve, subdivide, build upon, lease, manage and care for the land or interests therein, including air rights, and any buildings thereon owned or leased by such corporation.

Any such corporation may, with the approval of the housing board, and unless otherwise provided in this chapter, institute proceedings for the taking of land for its project under chapter eighty A, and the directors of a corporation organized under this chapter, or the directors or officers of insurance companies, banks or other authorized entities having the powers of directors of such corporation as provided in this chapter, shall be deemed the board of officers authorized to proceed under chapter eighty A; and the provisions of said chapter eighty A shall, so far as apt, apply to proceedings so instituted; but such directors or officers shall have no power to assess betterments.

Any such corporation shall have the power, with the approval of the housing board, to sell, exchange, give or otherwise transfer in whole or in part the land or interests therein, including air rights, leased or acquired by it under this chapter, with the buildings or other structures thereon, constituting a project or portion hereunder to any corporation organized under section three or section eighteen B, insurance company or companies authorized under section eighteen, bank or banks authorized under section eighteen A, or any other authorized entity under this chapter, a housing authority, redevelopment authority, or the commonwealth or any of its political subdivisions, agencies or instrumentalities but such land or interests therein, including air rights, buildings or other structures may be sold only subject to the further requirement that any change in the benefits and restrictions applicable to the grantee, donee or transferee and any other changes in the project shall not be valid unless approved in the manner provided in section six, except the city of Boston and Springfield, or section eighteen B, as the case may be.

Credits

Added by St.1945, c. 654, § 1. Amended by St.1975, c. 827, § 8.

Notes of Decisions (2)

M.G.L.A. 121A § 11, MA ST 121A § 11
Current through Chapter 87 of the 2020 2nd Annual Session

End of Document


KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 121B. Housing and Urban Renewal (Refs & Annos)

M.G.L.A. 121B § 11

§ 11. Powers of operating agencies

Currentness

Each operating agency shall have the powers and be subject to the limitations provided in sections one to sixteen, inclusive, shall have the powers necessary or convenient to carry out and effectuate the purposes of the relevant provisions of the General Laws and shall have the following powers in addition to those specifically granted in this chapter:--

(a) To sue and be sued; to have a seal; to have corporate succession;

(b) To act as agent of, or to cooperate with the federal government in any clearance, housing, relocation, urban renewal or other project which it is authorized to undertake;

(c) To receive loans, grants and annual or other contributions from the federal government or from any other source, public or private;

(d) To take by eminent domain under chapter seventy-nine or chapter eighty A, or to purchase or lease, or to acquire by gift, bequest or grant, and hold, any property, real or personal, or any interest therein, found by it to be necessary or reasonably required to carry out the purposes of this chapter, or any of its sections, and to sell, exchange, transfer, lease or assign the same; provided, that in case of a taking by eminent domain under said chapter seventy-nine, the provisions of section forty of said chapter shall be applicable, except that the security therein required shall be deposited with the mayor of the city or the selectmen of the town in which the property to be taken is situated. Except as herein otherwise provided, the provisions of chapters seventy-nine and eighty A relative to counties, cities, towns and districts, so far as pertinent, shall apply to operating agencies, and the members of a housing or redevelopment authority shall act on its behalf under those chapters.

(e) To clear and improve any property acquired by it;

(f) To engage in or contract for the construction, reconstruction, alteration, remodeling or repair of any clearance, housing,

relocation, urban renewal or other project which it is authorized to undertake or parts thereof;

(g) To make relocation payments to persons and businesses displaced as a result of carrying out any such project;

(h) To borrow money for any of its purposes upon the security of its bonds, notes or other evidences of indebtedness, and to secure the same by mortgages upon property held or to be held by it or by pledge of its revenue, including without limitation grants or contributions by the federal government, or in any other lawful manner, and in connection with the incurrence of any indebtedness to covenant that it shall not thereafter mortgage the whole or any specified part of its property or pledge the whole or any specified part of its revenues;

(i) To invest in securities legal for the investment of funds of savings banks any funds held by it and not required for immediate disbursement;

(j) To enter into, execute and carry out contracts with any person or organization undertaking a project under chapter one hundred and twenty-one A;

(k) To enter, with the approval of the mayor or board of selectmen and the department, into agreements with the federal government relative to the acceptance or borrowing of funds for any project it is authorized to undertake and containing such covenants, terms and conditions as the operating agency, with like approval, may deem desirable; provided, however, that nothing herein shall be construed to require approval by the mayor or selectmen or the department of requisition agreements and similar contracts between an agency and the federal government which are entered into pursuant to an agreement approved by them;

(*l*) To enter into, execute and carry out contracts and all other instruments necessary or convenient to the exercise of the powers granted in this chapter;

(m) To make, and from time to time amend or repeal, subject to the approval of the department, by-laws, rules and regulations, not inconsistent with pertinent rules and regulations of the department to govern its proceedings and effectuate the purposes of this chapter;

(n) To join or cooperate with one or more other operating agencies in the exercise, either jointly or otherwise, of any of their powers for the purpose of financing, including the issuance of bonds, notes or other obligations and the giving of security therefor, planning, undertaking, owning, constructing, operating or contracting with respect to any project or projects authorized by this chapter located within the area within which one or more of such authorities are authorized to exercise their powers; and for such purpose to prescribe and authorize, by resolution, any operating agency so joining and cooperating with it to act in its behalf in the exercise of any of such powers; and

(*o*) To lease energy saving systems that replace non-renewable fuels with renewable energy such as solar powered systems.

Credits

Added by St.1969, c. 751, § 1. Amended by St.1970, c. 851, § 2; St.1979, c. 183; St.1984, c. 189, §§ 96 to 98.

Notes of Decisions (17)

M.G.L.A. 121B § 11, MA ST 121B § 11
Current through Chapter 64, except Chapter 47 of the 2019 1st Annual Session

End of Document

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 121B. Housing and Urban Renewal (Refs & Annos)

M.G.L.A. 121B § 45

§ 45. Urban renewal programs declaration of necessity

Currentness

It is hereby declared that substandard, decadent or blighted open areas exist in certain cities and towns in this commonwealth; that each constitutes a serious and growing menace, injurious and inimical to the safety, health, morals and welfare of the residents of the commonwealth; that each contributes substantially to the spread of disease and crime, necessitating excessive and disproportionate expenditure of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution and punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities; that each constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities and towns, and retards the provision of housing accommodation; that each decreases the value of private investments and threatens the sources of public revenue and the financial stability of communities; that because of the economic and social interdependence of different communities and of different areas within single communities, the redevelopment of land in decadent, substandard and blighted open areas in accordance with a comprehensive plan to promote the sound growth of the community is necessary in order to achieve permanent and comprehensive elimination of existing slums and substandard conditions and to prevent the recurrence of such slums or conditions or their development in other parts of the community or in other communities; that the redevelopment of blighted open areas promotes the clearance of decadent or substandard areas and prevents their creation and occurrence; that the menace of such decadent, substandard or blighted open areas is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the acquisition of property for the purpose of eliminating decadent, substandard or blighted open conditions thereon and preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, the disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by urban renewal agencies and any assistance which may be given by cities and towns or any other public bodies in connection therewith are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the acquisition, planning, clearance, conservation, rehabilitation or rebuilding of such decadent, substandard and blighted open areas for residential, governmental, recreational, educational, hospital, business, commercial, industrial or other purposes, including the provision of streets, parks, recreational areas and other open spaces, are public uses and benefits for which private property may be acquired by eminent domain or regulated by wholesome and reasonable orders, laws and directions and for which public funds may be expended for the good and welfare of this commonwealth.

It is further declared that while certain of such decadent, substandard and blighted open areas, or portions thereof, may require acquisition and clearance because the state of deterioration may make impracticable the reclamation of such areas or portions by conservation and rehabilitation, other of such areas, or portions thereof, are in such condition that they may be conserved and rehabilitated in such a manner that the conditions and evils enumerated above may be alleviated or eliminated; and that all powers relating to conservation and rehabilitation conferred by this chapter are for public uses and purposes for which public money may be expended and said powers exercised.

The necessity in the public interest for the provisions of this chapter relating to urban renewal projects is hereby declared as a matter of legislative determination.

Credits

Added by St.1969, c. 751, § 1.

Notes of Decisions (2)

M.G.L.A. 121B § 45, MA ST 121B § 45
Current through Chapter 12 of the 2019 1st Annual Session

End of Document

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 121B. Housing and Urban Renewal (Refs & Annos)

M.G.L.A. 121B § 46

§ 46. Powers of urban renewal agency

Currentness

An urban renewal agency shall have all the powers necessary or convenient to carry out and effectuate the purposes of relevant provisions of the General Laws, and shall have the following powers in addition to those specifically granted in section eleven or elsewhere in this chapter:--

(a) to determine what areas within its jurisdiction constitute decadent, substandard or blighted open areas;

(b) to prepare plans for the clearance, conservation and rehabilitation of decadent, substandard or blighted open areas, including plans for carrying out a program of voluntary repair and rehabilitation of buildings and improvements, plans for the enforcement of laws, codes and regulations relating to the use of land and the use or occupancy of buildings and improvements, plans for the compulsory repair and rehabilitation of buildings and improvements, and plans for the demolition and removal of buildings and improvements;

(c) to prepare or cause to be prepared urban renewal plans, master or general plans, workable programs for development of the community, general neighborhood renewal plans, community renewal programs and any plans or studies required or assisted under federal law;

(d) to engage in urban renewal projects, and to enforce restrictions and controls contained in any approved urban renewal plan or any covenant or agreement contained in any contract, deed or lease by the urban renewal agency notwithstanding that said agency may no longer have any title to or interest in the property to which such restrictions and controls apply or to any neighboring property;

(e) to conduct investigations, make studies, surveys and plans and disseminate information relative to community development, including desirable patterns for land use and community growth, urban renewal, relocation, and any other matter deemed by it to be material in connection with any of its powers and duties, and to make such studies, plans and information available to the federal government, to agencies or subdivisions of the commonwealth and to interested persons;

(f) to develop, test and report methods and techniques and carry out demonstrations for the prevention and elimination of slums and urban blight;

(g) to receive gifts, loans, grants, contributions or other financial assistance from the federal government, the commonwealth, the city or town in which it was organized or any other source; and

(h) In any city whose population exceeds one hundred and fifty thousand, to own, construct, finance and maintain intermodal transportation terminals within an urban renewal project area. As used in this clause an "intermodal transportation terminal" shall mean a facility modified as necessary to accommodate several modes of transportation which may include, without limitation, inter-city mass transit service, rail or rubber tire, motor bus transportation, railroad transportation, and airline ticket offices and passenger terminal providing direct transportation to and from airports.

Credits

Added by St.1969, c. 751, § 1. Amended by St.1975, c. 581; St.1984, c. 189, §§ 100, 101.

Notes of Decisions (1)

M.G.L.A. 121B § 46, MA ST 121B § 46
Current through Chapter 12 of the 2019 1st Annual Session

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Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 121B. Housing and Urban Renewal (Refs & Annos)

M.G.L.A. 121B § 47

§ 47. Urban renewal programs; acquisition by eminent domain; notice; petition

Currentness

Notwithstanding any contrary provision of this chapter, an urban renewal agency may, with the consent of the department and municipal officers, and after a temporary loan contract for the purpose has been executed under the federal Housing Act of 1949, as amended,[1] take by eminent domain, as provided in clause (d) of section eleven, or acquire by purchase, lease, gift, bequest or grant, and hold, clear, repair, operate and, after having taken or acquired the same, dispose of land constituting the whole or any part or parts of any area which, after a public hearing of which the land owners of record have been notified by registered mail and of which at least twenty days notice has been given by publication in a newspaper having a general circulation in the city or town in which the land lies it has determined to be a decadent, substandard or blighted open area and for which it is preparing an urban renewal plan, and for such purposes may borrow money from the federal government or any other source or use any available funds or both; provided, however, that no such taking or acquisition shall be effected until the expiration of thirty days after the urban renewal agency has notified the land owner of record by registered mail and has caused a notice of such determination to be published, in a newspaper having general circulation in such city or town. Within thirty days after publication of the notice of such determination, any person aggrieved by such determination may file a petition in the supreme judicial or superior court sitting in Suffolk county for a writ of certiorari against the urban renewal agency to correct errors of law in such determination, which shall be the exclusive remedy for such purpose; and the provisions of section one D of chapter two hundred and thirteen, and of section four of chapter two hundred and forty-nine, shall apply to said petition except as herein provided with respect to the time for the filing thereof.

Credits

Added by St.1969, c. 751, § 1.

Notes of Decisions (1)

Footnotes

1 See 12 U.S.C.A. § 1701d-1 et seq.; 42 U.S.C.A. § 1401 et seq.

M.G.L.A. 121B § 47, MA ST 121B § 47
Current through Chapter 64, except Chapter 47 of the 2019 1st Annual Session

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Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 121B. Housing and Urban Renewal (Refs & Annos)

M.G.L.A. 121B § 48

§ 48. Public hearing; notice; urban renewal plans; approval; acquisition of property

Currentness

No urban renewal project shall be undertaken until (1) a public hearing relating to the urban renewal plan for such project has been held after due notice before the city council of a city or the municipal officers of a town and (2) the urban renewal plan therefor has been approved by the municipal officers and the department as provided in this section.

Whenever a public hearing on an urban renewal plan is held, notice thereof shall be sent to the Massachusetts historical commission together with a map indicating the area to be renewed.

Whenever the urban renewal agency determines that an urban renewal project should be undertaken in the city or town in which it was organized, it shall apply to the municipal officers for approval of the urban renewal plan for such project. Such application shall be accompanied by an urban renewal plan for the project, a statement of the proposed method for financing the project and such other information as the urban renewal agency deems advisable.

Every urban renewal plan approved by the municipal officers shall be submitted to the department together with such other material as the department may require.

The department shall not approve any urban renewal plan unless the planning board established under the provisions of section seventy or eighty-one A of chapter forty-one for the city or town where the project is located has found and the department concurs in such finding or, if no planning board exists in such city or town, the department finds that the urban renewal plan is based upon a local survey and conforms to a comprehensive plan for the locality as a whole. The department shall likewise not approve any urban renewal plan unless it shall have found (a) the project area would not by private enterprise alone and without either government subsidy or the exercise of governmental powers be made available for urban renewal; (b) the proposed land uses and building requirements in the project area will afford maximum opportunity to privately financed urban renewal consistent with the sound needs of the locality as a whole; (c) the financial plan is sound; (d) the project area is a decadent, substandard or blighted open area; (e) that the urban renewal plan is sufficiently complete, as required by section one; and (f) the relocation plan has been approved under chapter seventy-nine A.

Within sixty days after submission of the urban renewal plan, the department shall give written notice to the urban renewal agency of its decision with respect to the plan. If the department shall disapprove any such plan, it shall state in writing in such notice its reasons for disapproval. A plan which has not been approved by the department when submitted may be again submitted to it with such modifications, supporting data or arguments as are necessary to meet its objections. The department may hold a public hearing upon any urban renewal plan submitted to it, and shall do so if requested in writing within ten days after submission of the plan by the urban renewal agency, the mayor or city council of the city or selectmen of the town in which the proposed project is located, or twenty-five or more taxable inhabitants of such city or town.

Any provision to the contrary notwithstanding, when the location of a proposed urban renewal project has been determined, the urban renewal agency may, without awaiting the approval of the department, proceed, by option or otherwise, to obtain control of such property within the urban renewal project area as is necessary to carry out the urban renewal plan; but it shall not, without the approval of the department, unconditionally obligate itself to purchase or otherwise acquire any such property except as provided in section forty-seven.

When the urban renewal plan or such a project has been approved by the department and notice of such approval has been given to the urban renewal agency, such agency may proceed at once to acquire real estate within the location of the project, either by eminent domain or by grant, purchase, lease, gift, exchange or otherwise.

Credits

Added by St.1969, c. 751, § 1. Amended by St.1971, c. 168.

Notes of Decisions (22)

M.G.L.A. 121B § 48, MA ST 121B § 48
Current through Chapter 9 of the 2019 1st Annual Session

End of Document

AFFIDAVIT OF SERVICE

DOCKET NO. 2020-P-0451
----------X
Cobble Hill Center LLC

vs.

Somerville Redevelopment Authority
----------X

I, Joel E. Faller, swear under the pain and penalty of perjury, that according to law and being over the age of 18, upon my oath depose and say that:

on June 18, 2020

I served the Brief for Plaintiff-Appellant pursuant to Rule 13(a) of the Massachusetts Rules of Appellate Procedure within in the above captioned matter upon:

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Attorney for Appellee

via **Electronic Service** through the efileMA electronic filing system.

Filing has been completed on the same date as above via **Electronic Filing** through the efileMA electronic filing system.

Sworn to before me on June 18, 2019

/s/ Robyn Cocho

_____ /s/ Joel E. Faller

Robyn Cocho
Notary Public State of New Jersey
No. 2193491
Commission Expires January 8, 2022

Joel E. Faller
B.B.O. 659474

Job #296119